

BANKRUPTCY ACT

Cap 166 – 16 April 1888

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BANKRUPTCY ACT

PRELIMINARY

1. Short title

This Act may be cited as the Bankruptcy Act.

2. Interpretation

In this Act—

“agent” means the manager in Mauritius, carrying on business in Mauritius, for a person out of Mauritius who is subject to the laws of bankruptcy of Mauritius;

“available act of bankruptcy” means any act of bankruptcy available for a bankruptcy petition at the date of the petition on which the receiving order is made;

“bankruptcy notice” means a notice served upon a trader requiring payment of a judgment debt or a provable debt;

“debtor” means a debtor who is a trader;

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

“principal” means a person out of Mauritius for whom business is carried on by an agent in Mauritius and who is a debtor within the meaning of the law of bankruptcy;

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

“secured creditor” means a person holding a mortgage, charge or lien on property of the debtor, as a security for a debt due to him from the debtor;

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

“trader” means a person mentioned in the First Schedule;

“trustee” means the trustee in bankruptcy of a debtor’s property.

3. —

**PART I — PROCEEDINGS FROM ACT OF BANKRUPTCY
TO DISCHARGE**

4. Meaning of “debtor”

In section 5, “debtor” includes—

- (a) a person who is domiciled in Mauritius;
- (b) a person who within a year before the date of the presentation of the petition has ordinarily resided or had a dwelling-house or place of business in Mauritius; or
- (c) a person who though not in Mauritius, carries on business by an agent in Mauritius and possesses assets in Mauritius.

5. Act of bankruptcy

A debtor commits an act of bankruptcy where—

- (a) in Mauritius or elsewhere, he makes a conveyance or assignment of his property to any person for the benefit of his creditors generally;
- (b) in Mauritius or elsewhere, he makes a fraudulent conveyance, gift, delivery or transfer of his property or of any part of it;
- (c) in Mauritius or elsewhere, he conceals or removes any part of his property or creates any charge on it, which, if he were made bankrupt, would amount to an offence punishable under this Act;
- (d) in Mauritius or elsewhere, he makes a conveyance or transfer of his property or of any part of it, or creates any charge on it, which, if he were adjudged bankrupt, would constitute a fraudulent preference under this Act;

- (e) with intent to defeat or delay his creditors, he—
 - (i) departs, or makes preparation for departing, from Mauritius, or being out of Mauritius, remains out of Mauritius;
 - (ii) departs from his dwelling-house or otherwise absents himself;
 - (iii) begins to keep house; or
 - (iv) suffers himself to be outlawed or a sequestration to be issued against his property under the Criminal Procedure Act;
- (f) he files in the Court a declaration admitting his inability to pay his debts, or presents a bankruptcy petition against himself;
- (g) he suffers any seizure of his movable or immovable property to be made, or he suffers a provisional seizure or attachment of his movable property to be made, and fails, within 8 days from the seizure or attachment, to obtain the removal thereof or to give security for payment of the claim of the seizing or attaching creditor;
- (h) imprisonment has been decreed against him for the recovery of any final judgment debt;
- (i) a creditor has obtained a final judgment against him for any amount, and execution thereon not having been stayed, has served on him in Mauritius, or by leave of Court, elsewhere, a bankruptcy notice, and the debt remains due and payable after the expiration of 7 days, or such shorter period as the Court may in special circumstances, fix, after service of the notice where the service has been effected in Mauritius, or, where service has been effected elsewhere, then after the expiration of such time as has been fixed by the Court;
- (j) having been served with a bankruptcy notice and being indebted to a creditor in virtue of provable debt, he fails to pay, secure or compound the debt within such time as may be allowed by the Court upon the application of the creditor and upon the Court being satisfied that the trader has had notice of the application and has been called upon to show cause against the grant of the application;
- (k) he has admitted to any of his creditors that he is unable to meet his engagements or that he has suspended or is about to suspend the payment of his debts.

6. Jurisdiction to make receiving order

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

7. Conditions on which creditor may petition

(1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

- (a) the debt owing by the debtor to the petitioning creditor, or, if 2 or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors exceeds 3,000 rupees;
- (b) the debt is a liquidated sum, payable either immediately or at some certain future time;
- (c) the act of bankruptcy on which the petition is grounded has occurred within 3 months before the presentation of the petition;
- (d) the debtor is domiciled in Mauritius or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in Mauritius; or
- (e) the debtor is a person who, though not himself personally within Mauritius, carries on or within a year before the date of presentation of the petition has carried on business by an agent within Mauritius and possesses assets in Mauritius.

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

[S. 7 amended by Act 49 of 1984; Act 29 of 1990.]

8. Creditor's petition to be verified

A creditor's petition shall be verified by affidavit of the creditor, or of some other person having knowledge of the facts, and shall be served in the prescribed manner.

9. Hearing of creditor's petition

(1) At the hearing of the petition, the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, of the trading of the debtor, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of someone of the alleged acts of bankruptcy, and if satisfied with such proof, shall make a receiving order for the protection of the debtor's estate.

(2) The Court may adjourn the hearing of the petition, either conditionally or unconditionally, for obtaining further evidence, or for any other just cause, or may dismiss the petition with or without costs, as the Court thinks just.

(3) Where there are more respondents than one to the petition, the Court may dismiss the petition as to one or more of them, and may order the case to be proceeded with against the other or others of them.

(4) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such amount as would justify the petitioner in presenting a bankruptcy petition against him, the Court shall have jurisdiction for the trial of the question relating to such debt, subject to an appeal before the Supreme Court as provided in section 104.

10. Creditor's petition cannot be withdrawn

A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

11. Debtor's petition

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

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

12. Effect of receiving order

(1) On the making of a receiving order, the Official Receiver shall be instituted receiver of the property of the debtor and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any provable debt shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with leave of the Court and on such terms as the Court may impose.

(2) This section shall not affect the right of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it, if this section had not been passed.

13. Interim receiver

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

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

14. Power to appoint special manager

The Official Receiver may, on the application of any creditor, and if satisfied that the nature of the debtor's business or the interests of the creditors generally require the appointment of a special manager of the estate or business, appoint a manager to act until a trustee is appointed and such person shall give such security as may be directed by the Court, and shall receive such remuneration as shall be fixed by the creditors by resolution at an ordinary meeting subject to the approval of the Court.

15. Advertisement of receiving order

Notice of every receiving order stating the name, address and description of the debtor, the date of the order and the date of the petition, shall be published in the *Gazette* and in 2 local papers in the manner prescribed.

16. Meeting to consider proposal

(1) As soon as may be after the making of a receiving order, a general meeting of creditors shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained or whether it is expedient that the debtor be adjudged bankrupt.

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

(3) With respect to the proving of debts, the rules in the Third Schedule shall be observed.

17. Debtor's statement of affairs

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

(2) The statement shall be so submitted—

- (a) where the order is made on the petition of the debtor, within 3 days from the date of the order;
- (b) where the order is made on the petition of a creditor, within 7 days from the date of the order; or
- (c) within such extended time as the Court may, in either case, for special reasons, fix.

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

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect this statement at all reasonable times, and take a copy of it or extract from it, but any person untruthfully so stating himself to be a creditor shall commit a contempt of Court, and shall be punishable accordingly on the application of the trustee, Official Receiver or the debtor.

18. Public examination of debtor

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

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

(3) The Court may adjourn the examination.

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

(5) The Official Receiver shall take part in the examination of the debtor, and for this purpose, if specially authorised by the Court, may employ an attorney with or without barrister.

(6) Where a trustee is appointed before the conclusion of the examination, he may take part in it.

(7) The Court may put such questions to the debtor as it may think expedient.

(8) The debtor shall be examined upon oath, and he shall answer all such questions as the Court may put or allow to be put to him and such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him, and they shall also be open to the inspection of any creditor at all reasonable times.

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

19. Approval of composition or arrangement

(1) The creditors may at the first meeting or any adjournment thereof, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the debtor, or a proposal for a scheme of arrangement of the debtor's affairs.

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed (by a majority in number representing three fourths in value of all the creditors who have proved) at a subsequent meeting of the creditors, and is approved by the Court.

(3) Any creditor who has proved his debt may assent to or dissent from such composition or scheme by a letter addressed to the Official Receiver in the prescribed form, and attested by a witness, so as to be received by the Official Receiver not later than the day preceding such subsequent meeting, and such creditor shall be taken as being present and voting at such meeting.

(4) (a) The subsequent meeting shall be summoned by the Official Receiver by not less than 7 days notice, and shall not be held until after the public examination of the debtor is concluded.

(b) The notice shall state generally the terms of the proposal.

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

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

(7) Where the Court is of the opinion that the terms of the composition or scheme are not reasonable or are not calculated to benefit the general body of creditors, or in any case in which the Court is required under this Act where the debtor is adjudged bankrupt to refuse his discharge, the Court shall or may, if any such facts are proved as would under this Act justify the Court in refusing, qualifying or suspending the debtor's discharge, refuse to approve the composition or scheme.

(8) Where the Court approves the composition or scheme, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme, or by the terms being embodied in an order of the Court.

(9) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as it relates to any provable debt.

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

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

(12) (a) Where default is made in payment of any instalment due in pursuance of the composition or scheme, or where it appears to the Court on satisfactory evidence that the composition or scheme cannot in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done under or in pursuance of the composition or scheme.

(b) Where the debtor is adjudged bankrupt under this subsection, any debt provable in other respects which has been contracted before the date of adjudication shall be a provable debt.

(13) Where, under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, Part V shall apply to the trustee as if he were a trustee in a bankruptcy, and as if the terms "bankruptcy", "bankrupt" and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme.

(14) Part III shall, so far as the nature of the case and the terms of the composition or scheme admit, apply to it, the same interpretation being given to the words "trustee", "bankruptcy", "bankrupt", and "order of adjudication", as in subsection (13).

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

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

20. Effect of composition or scheme

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

21. Where composition not accepted or approved

(1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Act within 14 days after the conclusion of the examination

of the debtor, or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt, and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication, shall be published in the *Gazette* and in 2 local papers in the prescribed manner, and the date of the order shall for the purposes of this Act be the date of the adjudication.

22. Appointment of trustee

(1) Where a debtor is adjudged bankrupt or the creditors have resolved that he be so adjudged, the creditors may, by ordinary resolution, appoint a fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt, or resolve to leave his appointment to the committee of inspection mentioned in section 23.

(2) The person so appointed shall give security in such amount as shall be fixed by the Court, and the Court if satisfied with the security shall certify that his appointment has been duly made, unless the debtor or a creditor objects to the appointment, and the Court is satisfied that such appointment has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

(3) The appointment of a trustee shall take effect as from the date of the certificate.

(4) Where a trustee is not appointed by the creditors within 4 weeks from the date of the adjudication, or, in the event of negotiations for a composition or scheme being pending at the expiration of those 4 weeks, then within 7 days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve the composition or scheme, the Official Receiver shall report the matter to the Court and thereupon the Court may appoint a fit person, to be trustee of the bankrupt's property or may order the Official Receiver to act as trustee.

(5) The creditors or the committee of inspection (if so authorised by ordinary resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the Court.

(6) Where a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the Official Receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

23. Committee of inspection

(1) (a) The creditors qualified to vote may, at their first or any subsequent meeting, by ordinary resolution, appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

(b) The committee of inspection shall consist of not more than 5 nor less than 3 persons.

(2) (a) The committee of inspection, shall meet at such times as it may appoint and failing such appointment, at least once a month.

(b) The trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee is present at the meeting.

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

(5) Where a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from 5 consecutive meetings of the committee, his office shall thereupon become vacant.

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

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

(8) (a) The continuing members of the committee, provided there is not less than 2 such continuing members, may act notwithstanding any vacancy in their body.

(b) Where the number of members of the committee of inspection is for the time being less than 5, the creditors may increase that number so that it does not exceed 5.

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

24. Composition or scheme after adjudication

(1) Where a debtor is adjudged bankrupt, the creditors may, if they think fit, at any time after the adjudication, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them

under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs, and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

(2) Where the Court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.

(3) (a) Where default is made in payment of any instalment due in pursuance of the composition or scheme, or where it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any interested person, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme.

(b) Where a debtor is adjudged bankrupt under this section, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be a provable debt.

25. Discovery and realisation of property

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

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

(3) He shall, if adjudged bankrupt, assist to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(4) Where a debtor wilfully fails to perform the duties imposed on him by this section or to deliver up possession of any part of his property, which is divisible among his creditors under this Act and which is for the time being in his possession or under his control, to the Official Receiver or to the trustee, or

to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, commit a contempt of Court, and may be punished accordingly.

26. Arrest of debtor

(1) (a) The Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized and to be safely kept in such places and until such time as the Court may order under the following circumstances—

- (i) where, after a bankruptcy notice has been issued under this Act or after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he has committed any offence punishable under this Act or that he is about to abscond with a view to avoiding payment of the debt, in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him;
- (ii) where, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the Official Receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or any books, documents, or writings, which might be of use to his creditors in the course of his bankruptcy;
- (iii) where, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of 50 rupees without the leave of the Official Receiver or trustee;
- (iv) where, without good cause shown, he fails to attend any examination ordered by the Court.

(b) No arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at the time of his arrest shall be served with such bankruptcy notice.

(2) The Court may, at any time after the arrest of the debtor, order his release on his furnishing security to the satisfaction of the Court not to quit Mauritius without the leave of the Court.

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

27. Redirection of debtor's letters

(1) Where a receiving order is made against a debtor, the Court, on the application of the Official Receiver or trustee, may order that for such time not exceeding 3 months as the Court thinks fit, letters, postcards and post office money orders addressed to the debtor at any place mentioned in the order for redirections shall be redirected, sent or delivered by the Postmaster-General or the officers acting under him, to the Official Receiver or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

(2) The signature of the Official Receiver or the trustee on any money order payable to such debtor shall be a sufficient discharge thereof.

28. Discovery of debtor's property

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

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

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

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

(5) Where any person on examination before the Court admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the Official Receiver or trustee, order him to deliver to the Official Receiver or trustee such property or any part thereof, at such time, in such manner, and on such terms as the Court considers just.

29. Application for order of discharge

(1) A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the application shall be heard in open Court on such day as shall be appointed by the Court.

(2) Notice of such application and of the day appointed for hearing the same, shall be given and published in the prescribed manner, and the trustee or any creditor who has proved, may appear and object to such application.

(3) At the hearing of the application, the Court shall take into consideration a report of the Official Receiver, as to the bankrupt's conduct and affairs, which report shall be *prima facie* evidence of the statements contained in it.

30. Court may grant, refuse or suspend discharge

(1) Subject to subsection (2), the Court may grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt or with respect to his after acquired property.

(2) Where the bankrupt has committed any offence under this Act, or any offence connected with his bankruptcy, or where in any case any of the facts mentioned in section 31 are proved, the Court shall either—

- (a) refuse the discharge;
- (b) suspend the discharge for such period as the Court thinks proper;
- (c) suspend the discharge until a dividend of not less than 50 per cent has been paid to the creditors; or
- (d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the Official Receiver or trustee for any balance or part of any balance of the provable debts which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of any income from after acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct, but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts.

(3) Where at any time after the expiration of 2 years from the date of any order made under this section the bankrupt satisfies the Court that there is no reasonable probability of his being in a position to comply with the terms of the order, the Court may modify the terms of the order or of any substituted order in such manner and upon such conditions as it thinks fit.

(4) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

(5) With a view to removing any statutory disqualification on account of bankruptcy, which is removed if the bankrupt obtains from the Court his discharge with the certificate to the effect that the bankruptcy was caused by

misfortune without any misconduct on his part, the Court may, if it thinks fit, grant such a certificate, and a refusal to grant such a certificate shall be subject to appeal.

31. Where discharge can be refused or suspended

- (1) The facts referred to in section 30 (2) are the following—
- (a) the bankrupt's assets are not of a value equal to 50 per cent of the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to 50 per cent of the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;
 - (b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and has not sufficiently disclosed his business transactions and financial position within the 3 years immediately preceding his bankruptcy;
 - (c) the bankrupt has continued to trade after knowing himself to be insolvent;
 - (d) the bankrupt has contracted a provable debt without having at the time of contracting it any reasonable or probable ground of expectation (proof of which shall lie on him) of being able to pay it;
 - (e) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
 - (f) the bankrupt has brought on or contributed to his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;
 - (g) the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;
 - (h) the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action;
 - (i) the bankrupt has, within 3 months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;
 - (j) the bankrupt has, within 3 months preceding the date of the receiving order, incurred liabilities with a view to making his assets equal to 50 per cent of the amount of his unsecured liabilities;
 - (k) the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors;
 - (l) the bankrupt has been guilty of any fraud or any fraudulent breach of trust.

(2) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to 50 per cent of the amount of his unsecured liabilities where the Court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to 50 per cent of his unsecured liabilities, and a report by the Official Receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities.

32. Duties of discharged bankrupt

A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the Official Receiver or the trustee may require in the realisation and distribution of his property, and if he fails to do so, he shall commit a contempt of Court and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequently to the discharge, but before its revocation.

33. Effect of order of discharge

(1) An order of discharge shall not release the bankrupt from any debt on a recognisance nor from any fine or debt with which the bankrupt may be chargeable at the suit of the State (or of any person) for any offence against any Act, or on bail bond entered into for the appearance of any person prosecuted for any offence, and he shall not be discharged from such excepted debts unless the President certifies in writing his consent to his being discharged from them.

(2) An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability from which he has obtained forbearance by any fraud to which he was party.

(3) An order of discharge shall not release any person who, at the date of the receiving order, was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

(4) An order of discharge shall release the bankrupt from all other provable debts.

(5) An order of discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give the special matter in evidence.

[S. 33 amended by Act 48 of 1991.]

PART II — DISQUALIFICATIONS OF BANKRUPT

34. Disqualifications of undischarged bankrupt

(1) Where a debtor is adjudged bankrupt, he shall, subject to this Act, be disqualified for being elected to or holding or exercising the office of Mayor or Municipal Councillor.

(2) Such disqualifications shall be removed and shall cease when the adjudication in bankruptcy is annulled, or when the debtor obtains his discharge with a certificate from the Court to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

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

35. Office vacated by bankruptcy of holder

Where the debtor is adjudged bankrupt whilst being an elected member of the Assembly or whilst holding the office of Mayor or Municipal Councillor, his seat or office shall become vacant.

PART III — ADMINISTRATION OF PROPERTY

36. Description of debts

(1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy.

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

(3) Subject to subsections (1) and (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be provable debts.

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

(5) Any person aggrieved by an estimate made under subsection (4) may appeal to the Court.

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

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

(8) In this Act, “liability” includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of money, or money’s worth, whether the payment is—

- (a) as to amount, fixed or unliquidated;
- (b) as to time present or future, certain or dependent on any one contingency or on 2 or more contingencies; and
- (c) as to mode of valuation, capable of being ascertained by fixed rules or as a matter of opinion.

37. Mutual credit and set-off

(1) Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order is made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and only the balance of the account, shall be claimed or paid on either side respectively.

(2) A person shall not be entitled under this section to claim the benefit of any set off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

38. Payment of debts

The debts of the bankrupt shall, except as provided otherwise in this Act, be paid according to the laws in force in Mauritius with regard to privileges and priority of claims.

39. Rights of resumption and resolution

The privilege and right of resumption (revendication) of Article 2150 of the Code Civil Mauricien, and the right of resolution of the unpaid vendor of movables, shall not be allowed in bankruptcy except as provided in section 48.

40. Preferential debts

(1) All preferential debts due by the bankrupt shall, in the first instance, be presented to the Official Receiver and costs concerning them will only be allowed out of the bankrupt's estate, in case the Official Receiver has refused to admit the same.

(2) On receiving notice of any such claim, the Official Receiver shall verify the claim, and if satisfied that it is well founded, shall move the Court for an order authorising payment of the claim.

(3) Where any claim has been wrongly admitted by the Official Receiver, a trustee may apply to the Court to set it aside.

41. Order of priority in respect of costs

The costs in bankruptcy incurred prior to the appointment of the trustee shall be paid out of the debtor's estate by preference to all other creditors and in the following order priority—

- (a) the costs and charges of the Official Receiver;
- (b) the costs incurred in securing or realising any of the property or assets of the debtor;
- (c) the costs of the petitioning creditor to obtain the adjudication of bankruptcy.

42. Claim of the landlord

(1) Subject to subsection (2), the claim of the landlord for rent shall be paid on the price of the movables, placed on the premises leased, in priority to all other claims, but after payment of the costs mentioned in section 41.

(2) Where, prior to the receiving order, the landlord has seized such movables, his claim shall be paid on the net value of the property seized in priority to all the costs mentioned in section 41.

43. Landlord's privilege

(1) The landlord's privilege for rent shall not exceed 4 months' rent due prior to the adjudication of bankruptcy and such privilege shall continue for all the time during which the Official Receiver or trustee remains in possession of the premises leased.

(2) The same privilege shall extend to sums due for 4 months' use and occupation under section 166 of the Courts Act and to a landlord's claim to indemnity for injury under section 67.

(3) Where such rent or sum claimable for use and occupation falls due at stated periods and the order of adjudication is made at any time other than one of such periods, the landlord shall be entitled to his privilege for rent or for use and occupation up to the day of the adjudication of bankruptcy, as if such rent or sum accrued from day-to-day.

44. Privilege of clerks, servants and workmen

(1) Where, at the time of the presentation of the bankruptcy petition, the debtor is indebted to any of his clerks, servants or workmen in respect of the salary or wages of such clerk, servant or workman, whether payable for time or piece-work, the Court may order so much as shall be so due, not exceeding 3 months salary or wages, to be paid to each such clerk, servant or workman out of the bankrupt's estate by privilege after the preferential claims mentioned in sections 38 to 43.

(2) The claims of the clerks, servants and workmen under this section shall rank equally between themselves and shall be paid *pari passu*.

45. Joint and separate debts

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

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

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

46. Relation back of trustee's title

The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within the 3 months preceding the date of the presentation of the bankruptcy petition, but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

47. Description of bankrupt's property

The property of the bankrupt divisible among his creditors, in this Act referred to as the property of the bankrupt, shall comprise—

- (a) all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy or may be acquired by or devolve on him during its continuance;
- (b) the capacity to exercise and to take proceedings for exercising all such powers in and over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or during its continuance;

- (c) all movable property being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, by the consent and permission of the true owner, of which movable property the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner except incorporeal movables other than debts due to him in the course of his trade or business.

48. Property not divisible among creditors

(1) The following shall not form part of the bankrupt's property divisible among his creditors—

- (a) property held by the bankrupt on trust or as a deposit for any other person;
- (b) the necessary wearing apparel and bedding of himself, his spouse and children, the whole to a value not exceeding 500 rupees to be fixed by the Court according to circumstances, and the tools, if any, of his trade;
- (c) property existing in kind among the debtor's assets and which he obtained by means of fraud when he was in actual contemplation of bankruptcy and for which he has not paid on condition that the property is claimed within 8 days from the date of the publication in the *Gazette* of the order of adjudication, and that the property has been obtained within one month prior to the petition;
- (d) all negotiable instruments or other unpaid titles existing in kind among the bankrupt's assets and which have been sent or delivered by the owner thereof for the mere purpose of the bankrupt obtaining payment and keeping the amount at the owner's disposal or which have been by the owner applied to or destined for specified debts;
- (e) all goods and merchandise consigned to the bankrupt to be sold for the account of the owner and existing in kind among the bankrupt's assets, and also the price or portion of the price due to the bankrupt by a purchaser of the goods and merchandise;
- (f) all goods and merchandise sold to the bankrupt, the price of which is wholly or partly due and which have not been delivered to the bankrupt or his agent.

(2) No claim for any instrument, title or goods and merchandise mentioned in subsection (1) (d) and (e) shall be admitted unless the party making the claim pays to the Official Receiver or trustee all sums spent by the bankrupt on account of the instrument, title or goods and merchandise and all advances made thereon for freight or carriage, commission, insurance and other costs.

(3) The vendor of goods referred to in subsection (1) (f) or his agent may retain the goods, or, where they have been sent to the bankrupt, may stop them before they are delivered to the bankrupt or his agent.

49. Rights under execution or attachment

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

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

50. Duties of usher as to goods seized

(1) Where movables of a debtor are taken in execution, and before their sale notice is served on the usher that a receiving order has been made against the debtor, the usher shall, on request, deliver the goods to the Official Receiver or trustee under the order, but the costs of execution shall be a charge on the goods delivered, and the Official Receiver or trustee may sell the goods or an adequate part thereof, for the purpose of satisfying the charge.

(2) (a) Where movables of a debtor are sold under an execution in respect of a judgment for a sum exceeding 200 rupees, the usher shall deduct the costs of the execution from the proceeds of the sale and pay the balance to the cashier of the Court to which he is attached, and the cashier shall retain it for 8 days; and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, the cashier shall hold the proceeds on trust to pay to the trustee.

(b) Where no such notice is served within such period, or where such notice having been served, the debtor is not adjudged bankrupt on such petition or on any other petition of which the cashier has notice, the cashier may deal with the proceeds as if no notice had been served on him.

(3) An execution levied by seizure and sale of the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the usher shall in all cases acquire a good title against the trustee in bankruptcy.

51. Avoidance of certain settlements

(1) Any settlement of property made by a trader not being a settlement made before and in consideration of marriage, of property actually vested in him at the time of such marriage, or not being a settlement made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the settlor becomes bankrupt within 2 years after the date of such

settlement, be void as against the trustee under this Act, and shall, if the settlor becomes bankrupt at any subsequent time within 10 years after the date of such settlement – unless the parties claiming under such settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in such settlement – be void as against such trustee.

(2) In this section, “settlement” includes any conveyance or mortgage.

52. Avoidance of preference in certain cases

(1) Every conveyance or transfer of property, or charge made thereon, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view to giving such creditor a preference over the other creditors shall, if the person making, paying, or suffering the same, is adjudged bankrupt on a bankruptcy petition presented within 3 months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void against the trustee in the bankruptcy.

(2) This section shall not affect the rights of any person taking title in good faith and for valuable consideration through or under a creditor of the bankrupt.

53. *Bona fide* transactions without notice

Subject to sections 49 to 52, nothing in this Act shall invalidate in the case of a bankruptcy—

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

where the following conditions are complied with—

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

54. Separation of property on demand

Notwithstanding Article 1446 of the Code Civil Mauricien, where the bankrupt is married other than under a regime of separation of property any creditor may require the separation of the property of the bankrupt and his spouse.

55. Property of bankrupt's spouse

(1) Notwithstanding any other enactment, in all marriages and in cases of judicial separation, unless the contrary is proved, it is presumed that all property acquired by the bankrupt's spouse is the property of the bankrupt and that it was paid for with his money and forms part of his assets.

(2) Where the bankrupt's spouse has paid any of the bankrupt's debt it shall be presumed, until the contrary is proved, that he did so with the bankrupt's money.

56. – 58. —

59. Vesting and transfer of property

(1) (a) Immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

(b) Until a trustee is appointed, the Official Receiver shall be the trustee for the purposes of this Act.

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

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

60. Possession of property by trustee

(1) The trustee shall, as soon as may be, take possession of the documents of the bankrupt, and all other parts of his property capable of manual delivery.

(2) The certificate of appointment of the trustee shall for all purposes be deemed to effect a conveyance or assignment to him of all the bankrupt's property.

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

(4) Where any part of the property of the bankrupt consists of incorporeal movables, these movables shall be deemed to have been duly assigned to the trustee.

(5) (a) Any treasurer or other officer or any banker, attorney or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the bankrupt or the trustee.

(b) Where he contravenes this subsection, he shall commit a contempt of Court, and may be punished accordingly on the application of the trustee.

61. Seizure of property of bankrupt

(1) Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt, or of any other person, and with a view to such seizure, may break open any house, building or room of the bankrupt where the bankrupt is supposed to be, or any building or place of the bankrupt where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that books, papers or other property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court, who may execute it according to its tenor.

(2) Where a bankrupt is in receipt of a salary, the Court, on the application of the trustee, shall make such order as it thinks just for the payment of any portion not exceeding one third of the salary to the trustee to be applied by him in such manner as the Court may direct.

(3) In this section, "bankrupt" includes "debtor".

62. What property may be disclaimed

(1) The trustee may by notice in writing signed by him and served on the interested party, within 3 months after the adjudication of bankruptcy, disclaim—

- (a) any part of the property of the bankrupt consisting of land, of any tenure burdened with onerous covenants, of shares or stock in companies, or of unprofitable contracts;
- (b) any other property that is unsaleable, or not readily saleable by reason of its binding the bankrupt to the performance of any onerous act, or to the payment of any sum of money.

(2) The property may be disclaimed, notwithstanding that the Official Receiver or trustee has endeavoured to sell or has taken possession of it, or exercised any act of ownership in relation to it.

(3) In the case of a lease, no such lease shall be disclaimed except with the leave of the Court and subject to such orders with respect to fixtures, tenant's improvements and other matters, as the Court thinks just.

(4) Where any such property has not come to the knowledge of the trustee within one month after the adjudication, he may disclaim such property at any time within 2 months after he first became aware of it.

63. Contract may be rescinded by Court

(1) The Court may, on application by or against any person who is entitled to the benefit of a contract made with the bankrupt, or is subject to the burden of any such contract, make an order rescinding such contract on such terms as to payment by or to either party, of damages for the non-performance of the contract, or otherwise as to the Court may seem equitable.

(2) Damages awarded to any person under subsection (1) shall be a provable debt.

64. Effect of disclaimer

Upon the disclaimer being executed, the property disclaimed shall, if a contract, be deemed to be determined from the date of the order of adjudication and, if a lease, be deemed to have been surrendered on the day the leave of the Court was granted and, if shares in company, be deemed to be forfeited from the date of the order of adjudication.

65. Right in disclaimed property

Any person interested in a disclaimed property may apply to the Court and the Court may order possession of the disclaimed property to be delivered to him or make such other order as to possession as may be just.

66. Release from liability on disclaimer

The disclaimer shall discharge the Official Receiver or trustee, as the case may be, from all personal liability in respect of the property disclaimed and shall also release the bankrupt and his property from any liability, without affecting the rights or liabilities of any other person.

67. Claim of person injured by disclaimer

(1) Subject to subsection (2), any person injured by the operation of a disclaimer shall be deemed to be a creditor of the bankrupt to the extent of such injury, and after the Court has fixed and determined the extent of such injury, the sum awarded by the Court shall be a provable debt.

(2) In the case of a landlord, the amount to which he shall be entitled for an injury suffered by him, shall not exceed one month's rent.

68. Limitation of time for disclaimer

The Official Receiver or trustee, as the case may be, shall not be entitled to disclaim any property in pursuance of this Act where an application in writing has been made to him by any person interested in such property, requiring him to decide whether he will disclaim or not, and he has, for a period of not less than 28 days after the receipt of the application or such further time as may be allowed by the Court, declined or neglected to give notice whether he disclaims the same or not, and in the case of a contract, if

the Official Receiver or trustee after such application, does not, within that period or extended period, disclaim the contract, he shall be deemed to have accepted it.

69. Powers of trustee alone

Subject to this Act, the trustee may—

- (a) exercise any powers vested in him under this Act, and execute all powers of attorney, deeds and other instruments expedient or necessary for the purpose of this Act;
- (b) give receipt for any money received by him which shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) prove, rank, claim and draw a dividend in the matter of the bankruptcy of any debtor of the bankrupt.

70. Powers of trustee with approval

(1) The trustee, with the permission and subject to the directions of the committee of inspection, or of the Court, where there is no committee of inspection, may—

- (a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or accruing to the bankrupt), with power to transfer the whole thereof to any person or company, or sell the same in parcels;
- (b) carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same;
- (c) bring, institute or defend any action, suit or other legal proceeding relating to the property of the bankrupt;
- (d) employ an attorney or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection or Court, as the case may be;
- (e) accept, as the price for the sale of any property of the bankrupt, a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee of inspection or the Court thinks fit;
- (f) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;
- (g) refer any dispute to arbitration, compromise all debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any debtor or person who may have incurred any liability to the bankrupt, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed;

- (h) make such compromise or other arrangement as may be thought expedient with creditors or persons claiming to be creditors in respect of any provable debts, or with persons preferring claims to property in the possession of or consigned to the bankrupt;
- (i) pay off any secured creditor and take possession of the security and pay any sum due on goods sold to the bankrupt which have not been delivered to the bankrupt or his agent;
- (j) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;
- (k) divide in its existing form among the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot advantageously be realised by sale;
- (l) disclaim any onerous property as provided by section 62.

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

(3) Where there is a sale of the bankrupt's property under subsection (1) (a)—

- (a) the purchaser or transferee of such book-debts shall not be bound to notify the purchase or transfer to the person by whom the debt is due;
- (b) the sale of all movable property shall be made by public auction;
- (c) the formalities prescribed by section 124 of the Sale of Immovable Property Act shall apply to the sale of all immovable property except that, where the committee of inspection or the Court is satisfied that the aggregate value of the immovable property does not exceed 3,000 rupees and that it would be more advantageous to proceed with the sale of such property by public auction, the committee of inspection or the Court may direct accordingly, notwithstanding section 124 of the Sale of Immovable Property Act.

71. Powers of Official Receiver as trustee

Where the Official Receiver acts as trustee, the powers given to the trustee under section 70 shall be exercised by him, subject to the directions and sanction of the Court.

72. Declaration of dividends

(1) After payment of all preferential claims and of all other sums ordered to be paid out of the bankrupt's estate and, subject to the retention of such

sums as may be necessary for the costs of administration or otherwise, the trustee shall, with all convenient speed, declare and distribute, in the prescribed manner, dividends among the creditors who have proved their debts to his satisfaction.

(2) Any dividend declared by the trustee shall consist, subject to this section, of all money in his hands at the time of the declaration of the dividend.

(3) Except as provided in section 75, the first dividend, if any, shall be declared and distributed within 4 months after the appointment of the trustee, unless the trustee satisfies the committee of inspection or the Official Receiver, as the case may be, that there is sufficient reason for postponing the declaration of the dividend to a later date.

(4) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than 6 months.

73. Rights of personal creditors of partners

(1) The personal estate of every partner of a firm shall accrue to and be paid to the personal creditors of such partner, and the creditors of the firm shall not receive any dividend out of the separate estate of such partner, until all the creditors of the latter have received the full amount of their respective debts.

(2) For the purposes of this section, the respective estates of the firm and of each partner, shall be administered by the same trustee, but separate accounts shall be kept by such trustee.

74. Mortgage creditors

(1) Where a distribution of the price of immovable property is made previous to the declaration of any dividends, the inscribed creditors whose claims are not collocated in full on such price shall, for whatever remains due to them, rank with the unsecured creditors *pari passu* on any dividend declared by the trustee if their claims have been proved.

(2) (a) Where one or more dividends are declared before the distribution of the price of the immovable property, the inscribed creditors shall be entitled to participate in such dividend or dividends and any sum allotted to them in any such dividend shall revert, in part or in full, to the bankrupt, in case their claim or any part thereof is subsequently collocated on the sale price of the immovables.

(b) Where part only of their claim is collocated, their share in the dividend shall be reduced in proportion to the sums for which they remain creditors after deduction of their collocations.

75. Creditors residing in distant places

(1) In the calculation and distribution of a dividend, the trustee shall make provision for provable debts appearing from the bankrupt's statements, to be due to persons resident in places so distant from the place where the

trustee is acting that, in the ordinary course of communication, they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for provable debts, the subject of claims not yet determined.

(2) This section shall not apply to the case of an absconding debtor who has left without filing his statement of affairs, in which case, the first dividend shall be declared after the expiration of 6 months from the date of the adjudication of bankruptcy and shall be paid to the creditors who have proved their claims in the prescribed manner.

76. Right of creditor who has proved debt late

Any creditor who has not proved his debt before the declaration of any dividend shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend he may have failed to receive before such money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

77. Final dividend

(1) Where the trustee has converted into money all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realised without needlessly protracting the bankruptcy, he shall declare a final dividend, and give notice to the creditors whose claims have been rejected by him, that if such claims are not admitted by the Court within such period as may be fixed by the Court, he will proceed to declare a final dividend without regard to their claims.

(2) After the expiration of such period, or if the Court, on application by any such creditor, grants him further time for establishing his claim, then on the expiration of such further time, the final dividend shall be distributed among the creditors who have proved, without regard to the claims of any other persons.

(3) Where the Court admits any claim which may have been rejected by the trustee, the holder of such claim shall be entitled to be paid out of all available property in the hands of the trustee, any dividend to which he would have been entitled if his claim had not been rejected by the trustee.

78. Bankrupt entitled to surplus

The bankrupt shall be entitled to any surplus remaining after payment of the debts due to his creditors, and of the costs, charges and expenses of the bankruptcy.

79. No action for dividend

No action or suit for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order the trustee to pay the dividend, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

PART IV – OFFICIAL RECEIVER

80. Books and accounts kept by Official Receiver

(1) The Official Receiver shall keep such books and accounts as may be directed by the Accountant-General.

(2) He shall send to the Accountant-General every month a detailed account of his monetary transactions, showing the amount paid and received on account of each estate during the month.

(3) On or before 4 April in every year there shall be laid before the President by the Official Receiver a return showing the particulars in every estate under his charge and which have not been formally wound up on 31 December in the preceding year, and also those which have been so wound up, and such return shall be certified by the Court and shall be subject to such further rules as may be made under section 67 of the Courts Act.

(4) He shall account to the Accountant-General for and pay over all money and deal with all securities as the Accountant-General directs.

[S. 80 amended by Act 48 of 1991.]

81. Status of Official Receiver

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

(2) The Official Receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

(3) All expressions referring to the trustee under a bankruptcy include, unless the context otherwise requires, the Official Receiver when acting as trustee.

(4) The trustee shall supply the Official Receiver with such information and give him such access to, and facilities for, inspecting the bankrupt's books and documents and generally shall give him such aid as may be requisite for enabling the Official Receiver to perform his duties under this Act.

82. Duties as regards debtor's conduct

As regards the debtor, the Official Receiver shall—

- (a) investigate the conduct of the debtor and report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this Act or which would justify the Court in refusing, suspending or qualifying an order for his discharge;
- (b) make such other reports concerning the conduct of the debtor as the Court may direct;
- (c) take such part as may be directed by the Court in the public examination of the debtor;

- (d) take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Director of Public Prosecutions may direct.

83. Duties as regards debtor's estate

(1) As regards the estate of a debtor, the Official Receiver shall—

- (a) pending the appointment of a trustee, act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;
- (b) subject to the approval of the Court, authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;
- (c) summon and preside at the first meeting of creditors;
- (d) issue forms of proxy for use at the meetings of creditors;
- (e) report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;
- (f) advertise the receiving order, the date of the creditor's first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;
- (g) act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager, the Official Receiver shall have the same powers as if he were an accountant and manager appointed by the Court, but shall as far as practicable consult the wishes of the creditors with respect to the management of the debtor's property and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, subject to subsection (3) or unless the Court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods.

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

PART V — TRUSTEES IN BANKRUPTCY

84. Remuneration of trustee

(1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part

shall be payable on the amount realised, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part out of the amount distributed in dividends.

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

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

(4) Where no remuneration has been voted to a trustee, he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the taxing officer may allow.

(5) A trustee shall not, under any circumstances, make any arrangement for or accept from the bankrupt, or any attorney, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up or give up any part of his remuneration, either as receiver, manager, or trustee to the bankrupt or any attorney or other person that may be employed about a bankruptcy.

85. Allowance and taxation of costs

(1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Act or rules to be performed by himself.

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

(3) (a) All bills and charges of attorneys, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made.

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

(4) Every such person shall, on request by the trustee, (which request the trustee shall make a sufficient time before declaring a dividend) deliver his bills of cost or charges to the proper officer for taxation, and if he fails to do so within 7 days after receipt of the request, or such further time as the

Court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

86. Separate account for trust money

(1) The trustee shall not pay sums received by him as trustee into his private banking account.

(2) He shall have at such local bank as the committee of inspection or the Court shall appoint, a separate and distinct account in the name of the estate administered by him, in which bank all sums received by him shall be paid to the credit of the estate; and if he, at any time, keeps in his hands any sum exceeding 500 rupees for more than 10 days, he shall be subject to the following liabilities—

- (a) he shall pay interest at the rate of 20 per cent per annum on the excess of such sum above 500 rupees as he may retain in his hands;
- (b) unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient, he shall, on the application of the Official Receiver or of any creditor, be dismissed from his office by the Court, and shall have no claim for remuneration, and be liable to any expenses to which the creditors may be put by or in consequence of his dismissal.

87. Accounts of trustee

The trustee shall open and keep his accounts and shall make his payments, in the prescribed manner.

88. Returns of accounts to Official Receiver

(1) The trustee shall cause his accounts to be audited every month by the committee of inspection and shall, every 3 months, forward a certified copy of such accounts to the Official Receiver.

(2) He shall transmit to the Official Receiver, on his application, a statement showing the proceedings in such bankruptcy up to the date of the statement containing the prescribed particulars, and made out in the prescribed form.

(3) The trustee, for the purposes of the examination of such accounts and statements, shall furnish the Official Receiver with such vouchers and information as shall be required.

(4) Where the trustee fails to transmit any of the accounts and statements or to furnish the vouchers and information required, the Court may under this section on the application of the Official Receiver, deal with the trustee as provided in section 86 (2) (b).

89. Duties of Official Receiver

(1) The Official Receiver shall examine the statements transmitted to him, and shall call the trustee to account for any misfeasance, neglect or omission which may appear on such statements, and may require the trustee to make good any loss the estate of the bankrupt may have sustained by such misfeasance, neglect or omission.

(2) Where the trustee fails to comply with such requisition, the Official Receiver may report the same to the Court, and the Court after hearing the trustee, or in his absence on proof that he has been summoned to appear, may order him to make good such loss, and may deal with him as provided in section 86 (2) (b).

90. Release of trustee

(1) Where the trustee has realised all the property of the bankrupt or so much of it as can in his opinion be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has resigned, or been removed from his office, or has ceased to act by reason of a composition having been approved, he may request the Official Receiver to call a meeting of the creditors to consider an application to be made to the Court for his release.

(2) At such meeting, the trustee shall lay before the creditors an account showing the manner in which the bankruptcy has been conducted, with a list of the unclaimed dividends, if any, and of the property, if any, outstanding, and shall inform the meeting that he proposes to apply to the Court for his release.

(3) The creditors assembled at the meeting may express their opinion as to the conduct of the trustee, and they or any of them may appear before the Court and oppose the release of the trustee.

91. Court may release trustee

The Court, after hearing arguments, if any, against the release of the trustee, shall grant or withhold the release, and if it withholds the release, shall make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty, and shall suspend his release until such charging order has been complied with, and the Court thinks just, to grant the release of the trustee.

92. Effect of release of trustee

The order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as trustee; but such order may be revoked by the Court on proof that it was obtained by fraud.

93. Official name of trustee

The trustee may sue and be sued by the official name of “Trustee of the Estate of A, a Bankrupt”, inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagement binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

94. Trustees may be appointed

(1) The creditors may appoint one or more persons to the office of trustee, with or without a committee of inspection.

(2) Where more persons than one are appointed, the creditors shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons and all such persons shall be included under the term “trustee”, and shall be joint tenants of the bankrupt’s property.

(3) The creditors may also by ordinary resolution appoint persons to act as trustees in succession where one or more of the persons appointed under subsection (2), decline to accept the office of trustee, fail to give the required security, or are not approved of by the Court.

95. Trustee becoming bankrupt

Where a receiving order is made against a trustee, he shall vacate his office of trustee.

96. Creditors may remove trustee

(1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which notice shall be given in the prescribed manner, remove a trustee appointed by them and appoint another one in his stead.

(2) Where, on the application of the Official Receiver or of any interested person, the Court is of opinion that a trustee is guilty of misconduct or fails to perform his duties under this Act it may remove him from his office.

97. Vacancy in office of trustee

Where any vacancy occurs in the office of trustee, by death, resignation, removal, or otherwise, and there is no other trustee to carry on the bankruptcy, the Official Receiver shall act as trustee and shall, on the requisition of any creditor who has proved, summon a general meeting of creditors for the purpose of filling up such vacancy.

98. Discretionary powers of trustee

(1) Subject to this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof among his creditors, have regard to any directions that may be given by special resolution of the

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

(2) The trustee may summon general meetings of creditors for the purpose of ascertaining their wishes and may also apply to the Court for directions in relation to any particular matter arising under the bankruptcy.

99. Appeal to Court

Where the bankrupt or any creditor, debtor or other person is aggrieved by any act of the trustee he may apply to the Court which may confirm, reverse, or modify the act complained of, and make such order as it thinks just.

100. Control of conduct of trustee

(1) The Official Receiver shall take cognisance of the conduct of the trustee, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements of the law with respect to the performance of his duties, or in the event of any complaint being made by the bankrupt or any creditor in regard thereto, the Official Receiver shall inquire into the matter and may move the Court accordingly and the Court may make such order as may be expedient.

(2) The Official Receiver may also direct a local investigation to be made of the books and vouchers of the trustee.

101. Limitation of voting powers of trustee

The vote of the trustee, or of his partner, clerk, attorney, or attorney's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any ordinary resolution affecting the remuneration or conduct of the trustee.

PART VI – CONSTITUTION, PROCEDURE AND POWERS OF COURT

102. Seal of Court

The Court shall have a seal and judicial notice shall be taken of the seal in all legal proceedings.

103. Jurisdiction of Bankruptcy Court

(1) Subject to this Act, the Bankruptcy Court may decide all questions of priorities, and all other questions, whether of law or fact, which may arise in any case of bankruptcy coming within the cognisance of the Court, or which the Court thinks expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) (a) The Court shall have jurisdiction to try and adjudicate upon all questions of ownership relating to movable or immovable property claimed by or from the trustee, whether such property be in the possession of the trustee or not, and to decide and adjudicate upon any debt or claim due to or from the bankrupt, upon such pleadings as shall be prescribed.

(b) The Judge in Bankruptcy may refer the parties to the competent Court to have any contested matter adjudicated upon on an issue framed by him, unless he thinks formal pleadings necessary.

(c) Where the reference is to the Supreme Court and is made by one of the Judges of that Court sitting in Bankruptcy, he shall be one of the Judges.

(3) Where default is made by any trustee, debtor or other person in obeying any order or direction of the Court under any power conferred by this Act or where any person is guilty of contempt of Court, the Court may after hearing such person, or after proof of his having been duly summoned to attend the Court, commit such person to prison for any time not exceeding one month and may at any time recall any such order.

104. Power to review or vary order and appeal

(1) The Court may review, rescind, or vary any of its orders.

(2) Any person may, within 21 days of the decision, appeal to the Supreme Court against a judgment or order of the Court.

[S. 104 reprinted by Reprint 3 of 1983; amended by Act 20 of 1993.]

105. Causes begun by Judge or Master

Any cause or matter begun by any of the Judges or by the Master and Registrar may be continued and determined by the Master and Registrar or any other Judge.

106. Discretionary powers of Court

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

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

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

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

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

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

107. Consolidation of petitions

Where 2 or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

108. Power to substitute petitioner

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

109. Proceedings on death of debtor

Where a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

110. Power to stay proceedings

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

111. Power to present petition against one partner

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

112. Actions by trustee and bankrupt's partners

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

113. Proceedings in partnership name

Any 2 or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against

under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise, as the Court may direct.

114. Formal defect not to invalidate proceedings

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

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

115. Erasure of inscription

The Court may order the erasure of any inscription by the Conservator of Mortgages where it appears that the creditor who has taken such inscription is not entitled to priority over the chirograph creditors of the bankrupt.

116. Summary administration in small cases

(1) Where a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the Official Receiver reports to the Court that the property of the debtor is not likely to exceed 10,000 rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon this Act shall be subject to the following modifications—

- (a) where the debtor is adjudged bankrupt, the Official Receiver shall be the trustee in bankruptcy;
- (b) there shall be no committee of inspection, but the Official Receiver may do with the permission of the Court all things which may be done by the trustee with the permission of the committee of inspection;
- (c) no fees shall be allowed in any such case to counsel or to attorney appearing in lieu of counsel except upon a certificate of the Judge that the presence of counsel or attorney was necessary.

(2) (a) Such other modifications may be made in this Act as may be prescribed by general rules with a view to saving expense and simplifying procedure.

(b) Nothing in this section shall permit the modification of this Act relating to the examination or discharge of the debtor.

PART VII – MISCELLANEOUS

117. Duties and liabilities of agent

All duties and liabilities imposed on the principal in the cases referred to in sections 17, 18, 25, 82 and 83 (3) shall devolve and be imposed on the agent where the principal is absent from Mauritius.

118. Costs and fees of Official Receiver

(1) (a) The fees as fixed by Schedule A to Legal Fees and Costs Rules 2000 shall be levied by the Official Receiver out of the debtor's estate and shall be paid into the Consolidated Fund.

(b) Such fees shall be paid by privilege as provided in section 41.

(2) Subject to subsection (3), necessary disbursements made by the Official Receiver when acting under this Act (the amount of these disbursements shall be settled by the Court) shall be paid out of the estate, if sufficient, and otherwise shall be payable by the petitioning creditor and recoverable upon a certificate of the Registrar of the amount allowed by the Court.

(3) The President may remit the whole or part of the costs payable by the petitioning creditor under this subsection.

[S. 118 reprinted by Reprint 2 of 1985; amended by Act 6 of 1985; Act 29 of 1990; Act 48 of 1991; Act 15 of 2000.]

119. Duty on petition

Petitions in bankruptcy shall be subject to a stamp duty of 50 rupees.

[S. 119 amended by Act 29 of 1990.]

120. Stamp duty and registration dues

No stamp duty or registration dues shall be levied on instruments or documents of a commercial nature, filed or produced in bankruptcy cases.

121. Gazette to be evidence

The production of a copy of the *Gazette* containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

122. Evidence from creditors' meetings

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

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

123. Evidence of proceedings in bankruptcy

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

(2) Subsection (1) shall also apply, if the seal referred to therein is the seal of the Bankruptcy Division of the Supreme Court, or if the signature purports to be the signature of the Judge who exercised jurisdiction in the bankruptcy proceedings in question, or if the certificate is given by any officer of the Master and Registrar's Office acting as Registrar in the said proceedings.

124. Swearing of affidavits

Subject to general rules, any affidavit to be used in the Bankruptcy Court may be sworn before any Judge of the Supreme Court or a District Magistrate.

125. Deposition as evidence

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

126. Unclaimed and undistributed money

(1) (a) Where the trustee, under any bankruptcy, composition or scheme pursuant to this Act has under his control any unclaimed dividend which has remained unclaimed for more than 12 months, or where, after making a final dividend, such trustee has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay the same to the Curator.

(b) The Curator shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect of that money.

(2) (a) Where any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive or distribute any funds or dividends under any bankruptcy law or any petition, resolution, deed or other proceeding under or in pursuance of any

such law have remained or remain unclaimed or undistributed for 12 months after the same became claimable or distributable, or in any other case for 2 years after the receipt thereof by such trustee or other person, the trustee or other person shall forthwith pay the same to the Curator and the Curator shall furnish such trustee or other person with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(b) The Curator may at any time require any such trustee or other person to submit to him an account verified by affidavit of the sums received and paid by him under or in pursuance of any such petition, resolution, deed or other proceeding under paragraph (a) and may require an audit of the account.

(3) All sums paid to the Curator under this section shall be deemed property in his charge under the Curatelle Act, and shall be subject to that Act.

127. Debtors having ceased to be traders

(1) Debtors who cease to be traders shall be liable to be made bankrupts in conformity with this Act for any debt or liability incurred whilst they were traders.

(2) No person, other than a trader, shall be liable to be made bankrupt.

(3) A trader shall be liable to be made bankrupt even though he is a minor and has traded contrary to Article 2 of the Code de Commerce.

(4) This Act shall not apply to a company as defined in the Companies Act.

128. Acts mentioning commission of bankruptcy

Where in any Act, instrument or proceeding passed, executed or taken before the commencement of this Act, mention is made of a commission of bankruptcy or fiat in bankruptcy, it shall be construed, with reference to the proceedings under a petition for adjudication of bankruptcy, as if a commission of, or a fiat in, bankruptcy had been actually issued at the time of the presentation of such petition.

129. When Court may annul adjudication

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

(2) Any person aggrieved by the order may appeal from the order to the Supreme Court.

130. Effect of order annulling adjudication

(1) (a) Where an adjudication is annulled under section 129, all sales and disposition of property and payments duly made, and all acts done, by the Official Receiver, the trustee, or other person acting under their authority, or by the Court, shall be valid.

(b) The property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or, in default of any such appointment, revert to the debtor on such terms and subject to such conditions as the Court may declare by order.

(2) An order of the Court annulling an adjudication in bankruptcy shall be published in the *Gazette* and notice of the order shall be published in 3 daily newspapers.

131. False evidence by debtor or other person

Where the debtor or other person when examined on oath before the Court or in affidavit wilfully makes any false statement, he shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

132. Punishment of fraudulent debtors

Any debtor by or against whom a bankruptcy petition has been presented shall, in each of the following cases, commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 3 years—

- (a) where he does not, to the best of his knowledge and belief, fully and truly discover to the Official Receiver or the trustee all his movable and immovable property, and how, and to whom, and for what consideration and when he disposed of any part of the property except such part as has been disposed of in the ordinary way of his trade or laid out in the ordinary expenses of his family, unless he proves that he had no intent to defraud;
- (b) where he does not deliver up to the Official Receiver or trustee, or as he directs, all such part of his movable property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud;
- (c) where he does not deliver up to the Official Receiver or trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;
- (d) where after the presentation of a bankruptcy petition against him or by himself or within 12 months before such presentation, he conceals any part of his property to the value of 50 rupees or upwards, or conceals any debt, due to or from him, unless he proves that he had no intent to defraud;
- (e) where after the presentation of a bankruptcy petition against him or by himself or within 12 months before the presentation, he fraudulently removes any part of his property of the value of 50 rupees or upwards;
- (f) where he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud;

- (g) where, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the Official Receiver or trustee of the debt;
- (h) where, after the presentation of a bankruptcy petition against him or by himself, he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (i) where, after the presentation of a bankruptcy petition against him or by himself or within 12 months before the presentation, he conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (j) where, after the presentation of a bankruptcy petition against him or by himself or within 12 months before the presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (k) where, after the presentation of a bankruptcy petition against him or by himself or within 12 months before the presentation, he fraudulently parts with, alters or makes any omission, or is privy to the fraudulent parting with, altering, or making any omission in any book or document affecting or relating to his property or affairs;
- (l) where, after the presentation of a bankruptcy petition against him or by himself or at any meeting of his creditors within 12 months before such presentation, he attempts to account for any part of his property by fictitious losses or by fictitious payments or expenses;
- (m) where, within 12 months before the presentation of a bankruptcy petition against him or by himself, he has, by any false representation or other fraud, obtained any property on credit and has not paid for the property;
- (n) where, within 12 months before the presentation of a bankruptcy petition against him or by himself, he obtains under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit and has not paid for the property unless he proves that he had no intent to defraud;
- (o) where, within 12 months before the presentation of a bankruptcy petition against him or by himself, he pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, an property which he has obtained on credit and has not paid for, unless he proves that he had no intent to defraud;

- (p) where he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy;
- (q) where, after the presentation of a bankruptcy petition against him or by himself or within 4 months before the presentation, he quits Mauritius and takes with him, or makes preparation for quitting Mauritius and for taking with him, any part of his property to the amount of 200 rupees or upwards, which ought by law to be divided among his creditors, unless he proves that he had no intent to defraud;
- (r) where, within one month before the presentation of a bankruptcy petition against him or by himself, he has sold away or disposed of goods being part of his assets under the market price, and has thereby reduced or has attempted to reduce his assets, unless he proves that he had no intent to defraud.

133. Debtor's fraudulent acts

Any debtor by or against whom a bankruptcy petition has been presented shall, in each of the following cases, commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year—

- (a) where, in incurring any debt or liability, he has obtained credit under false pretences, or by means of any other fraud;
- (b) where, after the presentation of a bankruptcy petition or within 12 months before the presentation, he has with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery or transfer of or any charge on his property;
- (c) where he has, with intent to defraud his creditors, concealed or removed any part of his property since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against him;
- (d) where, after the presentation of a bankruptcy petition against him or by himself, he quits Mauritius or makes preparation for quitting Mauritius if it is proved that he had intention to defraud his creditors and evade the bankruptcy law;
- (e) where, within the 3 years preceding his bankruptcy, he fails to keep the books required under the Income Tax Act or fails to make once in every year an inventory of his property unless he proves not only that he had no intent to defraud but also that in the circumstances in which he traded or carried on business the omission was honest and excusable.

134. Punishment of agents of debtors

(1) The agent of any debtor by or against whom a bankruptcy petition has been presented shall, in each of the following cases, commit an offence

and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years, with or without hard labour—

- (a) where he does not, to the best of his knowledge and belief, fully and truly discover to the Official Receiver or the trustee all the movable and immovable property of his principal and how, and to whom, and for what consideration and when the principal, or the agent on his behalf disposed of any part of it, except such part as has been disposed of in the ordinary way of trade or laid out in the ordinary expenses of the principal's family, unless he proves that he had no intent to defraud;
- (b) where he does not deliver up to the Official Receiver or trustee, or as he directs, all such part of the movable property of his principal as is in his custody or under his control, and which he is required by law to deliver up on behalf of his principal, unless he proves that he had no intent to defraud;
- (c) where he does not deliver up to the Official Receiver or trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to the property of affairs of his principal, unless he proves that he had no intent to defraud;
- (d) where, after the presentation of a bankruptcy petition by or against his principal or within 12 months before the presentation, he conceals any part of the property of his principal to the value of 50 rupees or upwards, or conceals any debt, due to or from his principal;
- (e) where, after the presentation of a bankruptcy petition by or against his principal or within 12 months before the presentation, he fraudulently removes any part of the property of his principal to the value of 50 rupees or upwards;
- (f) where he makes any material omission in any statement relating to the affairs of his principal, unless he proves that he had no intent to defraud;
- (g) where, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of one month to inform the Official Receiver or trustee;
- (h) where, after the presentation of a bankruptcy petition by or against his principal, he prevents the production of any book, document, paper or writing affecting or relating to the property or affairs of his principal, unless he proves that he had no intent to conceal the state of the affairs of his principal, or to defeat the law;
- (i) where, after the presentation of a bankruptcy petition by or against his principal or within 12 months before the presentation, he conceals, destroys, mutilates or falsifies, or is privy to

the concealment, destruction, mutilation or falsification of any book or document affecting or relating to the property or affairs of his principal;

- (j) where, after the presentation of a bankruptcy petition by or against his principal or within 12 months before the presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to the property or affairs of his principal;
- (k) where, after the presentation of a bankruptcy petition by or against his principal or within 12 months before the presentation, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any book or document affecting or relating to the property or affairs of his principal;
- (l) where, after the presentation of a bankruptcy petition by or against his principal or at any meeting of the creditors of his principal within 12 months before the presentation, he attempts to account for any part of the property of his principal by fictitious losses or by fictitious payments or expenses;
- (m) where, within 12 months before the presentation of a bankruptcy petition by or against his principal, he has obtained by any false representation or other fraud, any property on credit on behalf of his principal, and has not paid for the property;
- (n) where, within 12 months before the presentation of a bankruptcy petition by or against his principal, he obtains under the false pretence of carrying on the business of and dealing in the ordinary way of the trade of his principal, any property on credit on behalf of his principal and has not paid for the property;
- (o) where, within 12 months before the presentation of a bankruptcy petition by or against his principal, he pawns, pledges, or disposes of, otherwise than in the ordinary way of the trade of his principal, any property which he has obtained on credit on behalf of his principal and has not paid for the property;
- (p) where he is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of his principal or any of them to any agreement with reference to the affairs or the bankruptcy of his principal;
- (q) where, after the presentation of a bankruptcy petition by or against his principal or within 4 months before the presentation, he quits Mauritius and takes with him, or makes preparation for quitting Mauritius, and for taking with him any part of the property of his principal to the amount of 200 rupees or upwards, which ought by law to be divided among the creditors of his principal;

- (r) where, within one month before the presentation of a bankruptcy petition by or against his principal, he has sold away or disposed of goods being part of his assets under the market price, and has thereby reduced his assets unless he proves that he had no intent to defraud.

(2) Where an offence under subsection (1) (d), (i), (j), (n), (o), or (q) is committed after the presentation of the bankruptcy petition, it shall be for the agent to prove that he had no intent to defraud, or to conceal the state of the affairs of his principal, or to defeat the law, as the case may be; and in the case of any such offence committed within 4 months before the presentation of the petition, it shall be for the prosecution to prove that the agent had intention to defraud, or to conceal the state of the affairs of his principal, or to defeat the law, as the case may be.

135. Agent's fraudulent acts

The agent of any debtor by or against whom a bankruptcy petition has been presented shall, in each of the following cases, commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year, with or without hard labour—

- (a) where, in incurring any debt or liability on behalf of his principal, he has obtained credit under false pretences, or by means of any other fraud;
- (b) where, after the presentation of a bankruptcy petition or within 12 months before the presentation, he has with intent to defraud the creditors of his principal, or any of them, made or caused to be made any gift, delivery or transfer of or any charge on the property of his principal;
- (c) where he has, with intent to defraud the creditors of his principal, concealed or removed any part of the property of his principal since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against his principal, or against himself on behalf of his principal;
- (d) where, after the presentation of a bankruptcy petition by or against his principal, he quits Mauritius or makes preparation for quitting Mauritius if it is proved that he had intention to defraud the creditors of his principal and to evade the bankruptcy law;
- (e) where, within the 3 years preceding the bankruptcy of his principal, he fails to keep the books required under the Income Tax Act or fails to make once in every year an inventory of the property of his principal, unless he proves not only that he had no intent to defraud but also that in the circumstances in which he traded or carried on business the omission was honest and excusable.

136. Liability of agent residing in Mauritius

For the removal of doubts, the agent or manager of a debtor residing in Mauritius shall be criminally liable for his own acts as agent or manager, equally with his principal, where such acts in the case of a principal are declared to be fraudulent and are offences under this Act, and sections 132 and 133 shall accordingly apply to the agent or manager to the same extent and for the same purposes as they apply to the debtor.

137. Books of traders

(1) (a) The books which a trader is bound to keep under the Income Tax Act shall be numbered and initialled (*côtés et paraphés*) and visaed every year in the usual form and free of costs, in Port Louis by the Master, or by any of the District Magistrates of Port Louis, and in any district, other than Port Louis, by the Magistrate of such district.

(b) Such books may be numbered and initialled (*côtés et paraphés*) by any officer or officers of the Registry or any clerk or clerks of the District Court deputed in writing to that effect by the Master or the Magistrate, as the case may be.

(2) Traders shall be bound to keep these books for 5 years.

(3) No new book shall be issued until the book previously issued has been produced to, and closed, with a mention of the number of pages actually used at the time of closing, by the Master, or a District Magistrate as provided in subsection (1).

(4) Any trader keeping or using any book, or otherwise acting in contravention of this section, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

(5) Bankers carrying on the trade of banking only shall be exempted from this section.

138. Requirements as to keeping books

For the purposes of sections 133 (e) and 135 (e), a debtor or his agent (in addition to the requirements of the Income Tax Act as to the keeping of books) shall be deemed to have failed to keep the books required under the Income Tax Act where he has not kept—

- (a) the books in such a manner as to exhibit or explain his transactions and financial position in his trade or business, and as to show entries from day to day in sufficient detail of all cash received and paid;
- (b) in the case of a trade or business dealing in goods, statements of annual stocktakings, and accounts of all the goods sold and purchased unless those goods are sold by way of retail trade to the actual consumer, showing the buyers and sellers of the goods in sufficient detail to enable those goods and their buyers and sellers to be identified.

139. Trading by undischarged bankrupt

An undischarged bankrupt who—

- (a) either alone or jointly with any other person obtains credit to the extent of 100 rupees or upwards from any person without informing that person that he is an undischarged bankrupt; or
- (b) engages or is concerned in any trade or business, or acts as partner or as agent or representative of a trader, either under his own name, or under a name other than that under which he was adjudicated bankrupt, without disclosing to all persons with whom he enters into any business transaction the fact that he was adjudicated bankrupt, and the name under which he was so adjudicated bankrupt,

shall commit an offence and shall, on conviction, be liable to imprisonment.

140. Bankrupt's gambling and speculations

(1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall commit an offence and shall, on conviction, be liable to a term of imprisonment where, having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of the trade or business—

- (a) he has, within 2 years before the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and the gambling or speculations are unconnected with his trade or business;
- (b) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by the gambling or rash and hazardous speculations specified in this section; or
- (c) on being required by the Official Receiver or by the trustee at any time, or in the course of his public examination by the Court, to account for the loss of any substantial part of his estate incurred within a period of one year preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which the loss was incurred.

(2) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused person shall be taken into consideration at the time when he entered into the speculations.

141. Creditor's fraudulent acts

Where any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account which is untrue in

any material particular, he shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year.

142. Liability after discharge or composition

Where a debtor has committed any offence under this Act, he shall not be exempt from being proceeded against for the offence by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

143. Prosecution

Where the Official Receiver or the trustee reports to the Court that in his opinion a debtor or other person has committed an offence under this Act, or where the Court is satisfied upon the representation of any creditor or member of the committee of inspection or upon lawful evidence that there is ground to believe that the debtor or other person has committed any offence under this Act, the Court, if satisfied that there is reasonable probability that the debtor or other person may be convicted, may refer the matter to the Director of Public Prosecutions who may exhibit an information before the Supreme Court, the Intermediate Court or the District Court charging the debtor or other person with the offence.

144. Form of information and sentences

(1) In an information for an offence under this Act, it shall be sufficient to specify the substance of the offence charged in the words of the Act specifying the offence or as near to it as circumstances admit, without alleging or specifying any debt, act of bankruptcy, trading, adjudication or any proceedings in, or order, warrant or document of the Court acting under this Act.

(2) Any number of offences under this Act may be charged in the same information and separate, cumulative or successive sentences may be passed by the Supreme Court, the Intermediate Court or District Court, in respect of all offences so charged and may by those Courts be ordered to take effect subsequently to any previous sentence or sentences.

(3) Cumulative or successive sentences passed by the Intermediate Court shall not in total exceed 3 years' imprisonment with or without hard labour, and cumulative and successive sentences passed by the District Court shall not in all exceed one year's imprisonment with or without hard labour.

(4) Where a debtor or other person is charged with having committed offences against this Act or any other enactment relating to bankruptcy in more than one district, the prosecution in respect of all or any of the offences may take place in any of the districts in which one of the offences was committed.

145. Provisional seizure of goods of trader

(1) A Magistrate may and may be required even in a district to which he has not been appointed or which has not been assigned to him, to issue an order for the provisional seizure of the goods and movable property of any

trader upon the application of any creditor, on satisfactory proof being given that the trader is about to remove or is actually removing his goods and movable property.

(2) The order under subsection (1) may issue and process may be effected and served at any hour of the day or night and on any day, whether a public holiday or not.

(3) All process consequent on the order shall be effected and served by the usher of the district in which the order issues or by such other usher whom the Magistrate may appoint at the time he issues the order.

146. Powers of Superintendent of Police

(1) In cases of urgency, where immediate action appears necessary, the Superintendent of Police of the district may do any or all the things which a Magistrate is empowered to do under section 145.

(2) Any action taken under subsection (1) by the Superintendent shall within 24 hours be brought to the notice of a Magistrate who may confirm, amend, or set it aside.

FIRST SCHEDULE

[Section 2]

1. All allum makers, apothecaries, auctioneers, bankers, bleachers, brokers, brickmakers, builders, carpenters, carriers, cattle or sheep salesmen, coach proprietors, cow keepers, dyers, fullers, keepers of inns, taverns, hotels or coffee houses, lime burners, livery stable keepers, corn millers, printers, share brokers, shopowners, shipwrights, stock brokers, stock jobbers, victuallers, warehousemen, wharfingers, persons insuring ships or their freight or other matters against perils of the sea, fire, or other damages, managers or directors of theatres, and all persons using the trade of merchandise, by way of bargaining, exchange, bartering, commission, consignment or otherwise, in gross or by retail, and all persons who, either for themselves or as agents or factors for others, seek their living by buying and selling or buying and letting for hire goods or commodities, or by the workmanship, or the conversion of goods and commodities, and all persons exercising the trade or calling of scrivener or receiving other men's money or estates into their trust or custody; all persons who are traders by virtue of the Code de Commerce, shall be traders under this Act.

2. No sugar cane or other planter (whether an individual or a partnership) manufacturing or having manufactured sugar or other produce from his own estate or purchased from any other person, farmer, grazier, common labourer, or workman for hire, or member of or subscriber to any incorporated commercial or trading company established by Charter or Act of Parliament or to a *société*, *anonyme* duly authorised by the Government, or a dormant partner of a *société*, en *commandite* shall as such be a trader.

SECOND SCHEDULE

[Section 16 (2)]

1. The first meeting of creditors shall be summoned for a day not later than 14 days after the receiving order, unless the Court for any special reason thinks it expedient that the meeting be summoned for a later day.
2. (1) The Official Receiver shall summon the meeting by notices published in the *Gazette* and 2 daily newspapers, 5 days at least before the day fixed for the meeting.
(2) Meetings subsequent to the first, shall be summoned by letter, by sending a notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given on the debtor's statement of affairs, or such other address as may be known to the Official Receiver.
3. The Official Receiver or trustee may, at any time, summon a meeting and shall do so whenever so directed by the Court or so requested in writing by one fourth in value of the creditors.
4. Any such meeting shall be held in the office of the Official Receiver or in Court, if so directed by the Judge, and shall be presided over by the Official Receiver, or, in the event of his being unable to attend through illness or any unavoidable cause, by such Chairperson as the meeting may elect.
5. A meeting of creditors shall not be competent to act unless there are present at least 3 separate creditors qualified to vote, or all the creditors if their number does not exceed 3.
6. A creditor shall not be qualified to vote, unless at or previously to the meeting, he has by himself or by proxy proved a provable debt due to him.
7. A creditor shall not vote at any meeting in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained.
8. (1) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security.
(2) Where he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.
9. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting but not for the purposes of dividend, to deduct it from his proof.
10. (1) It shall be competent to the trustee or the Official Receiver, within 28 days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated, with an addition of 20 per cent.

(2) Where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of 20 per cent shall not be made if the trustee requires the security to be given up.

11. (1) Votes may be given either personally or by proxy but no proxy shall be entitled to represent more than 3 creditors.

(2) A proxy shall not be used unless it is deposited with the Official Receiver before the meeting at which it is to be used.

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

(2) Where any person holds special proxies to vote for the appointment of himself as trustee, he may use the proxies and vote accordingly.

13. In default of the required quorum, or in case any necessity for so doing arises, the meeting of creditors shall be adjourned by the Chairperson, and notice of any such adjournment shall be published in 2 daily newspapers at least 5 days at least before the meeting.

14. The person presiding at a meeting of creditors shall cause minutes to be kept and duly entered in a book, of all resolutions and proceedings of such meeting, and any such minutes, if purporting to be signed by the Chairperson of the meeting at which such resolutions were passed or proceedings had, shall be received as evidence in all legal proceedings.

15. As soon as may be after a meeting of creditors, the Official Receiver shall file in Court a copy of the minutes of proceedings and resolutions had and taken at such meeting.

THIRD SCHEDULE

[Section 16 (3)]

PROOF IN ORDINARY CASES

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

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

3. (1) The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor.

(2) Where the affidavit is made by a person so authorised, it shall state his authority and means of knowledge.

4. (1) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated.

(2) The Official Receiver or trustee may at any time call for the production of the vouchers.

5. The affidavits shall state whether the creditor is or is not a secured creditor.

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

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

8. A creditor proving his debt shall deduct from it all trade discounts, but he shall not be compelled to deduct any discount not exceeding 5 per cent on the net amount of his claim, which he may have agreed to allow for payment in cash.

9. Where a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

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

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

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

(2) (a) Subject to paragraph (3), where the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct.

(b) Where the sale is by public auction, the creditor, or the trustee on behalf of the estate, may bid or purchase.

(3) A creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within 6 months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it, and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but

every such amendment shall be made at the cost of the creditor, and upon such terms as the Court may order, unless the trustee allows the amendment without application to the Court.

14. Where a valuation has been amended in accordance with rule 13, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or as the case may be, shall be entitled to be paid, out of any money for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. Where a creditor after having valued his security subsequently realises it, or where it is realised under rule 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respect as an amended valuation made by the creditor.

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

17. Subject to rule 12, a creditor shall, in no case, receive more than the full amount of his claim in principal and interest as provided by this Act.

18. Where a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of 2 or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

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

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding 4 per cent per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of 5 per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

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

(2) Where he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

23. Where the Official Receiver thinks that a proof has been improperly admitted, the Court may, on his application after notice to the creditor who made the proof, expunge the proof or reduce its amount.

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

25. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee or the Official Receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

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