

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

Apprentices discharged from their indentures.

Sum to be paid in respect of apprentice fees.

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

Mutual debts and credits may be set off.

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

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

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

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

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

Proof by sureties-

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

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

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

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

Proof by annuity creditor.

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

Proof by sureties for payment of annuities.

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

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

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

Proof for contingent debt.

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

Claim and proof for contingent liability.

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

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

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

Proof for interest.

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

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

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

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

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

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

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

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

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

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

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

Undertaking for costs.

Creditor
having security
not to receive
more than
other creditors.

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

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

Accounts of
assignees.

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

AUDIT, AND MONEY BELONGING TO THE INSOLVENT ESTATE

Audit.

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

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

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

Remuneration
to assignees.

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

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

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

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

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

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

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

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

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

DIVIDENDS

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

Method of making dividends.

No dividend without previous audit

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

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