

ARRANGEMENTS BY DEED

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

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

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

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

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

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

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

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

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

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

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

Rights of creditors.

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

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

COMPOSITION AFTER ADJUDICATION OF
INSOLVENCY

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

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

Mode of voting in deciding upon such composition.

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

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

EVIDENCE

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

Officer of court to produce proceeding and give copies thereof.