

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

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

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

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

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

and if they fail to attend, warrant.

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

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

Service of summons where person keeps out of the way.

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

Power to examine persons summoned or present at any sitting.

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

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

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

such order to  
have effect of  
judgment

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

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

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

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

#### POWER OF THE DISTRICT COURT OVER CERTAIN DESCRIPTIONS OF PROPERTY

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

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

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

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

Assignments of  
vessels under  
the Merchant  
Shipping Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Payment by insolvent,

conveyances by him;

contracts and dealings with him,

and executions •

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

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

but not to extend to Fraudulent preferences, &c.

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

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

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

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

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

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

**STAMPS**

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

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

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

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

**APPOINTMENT BY THE COURT OF PROVISIONAL ASSIGNEES**

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

As to appointment by court of provisional assignee.

\*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.

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

Removal of provisional assignee.

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

Provisional assignee not to sell property without authority of court.

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

Effect of appointment of provisional assignee.

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

#### CHOICE OF ASSIGNEES, AND THEIR RIGHTS AND DUTIES

Assignees when and how chosen.

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

Court may reject or remove any person chosen as unfit

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

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

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

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

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

Who incompetent to be appointed assignee.

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

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