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REPORT

OF THE

BANKS' LIQUIDATION PROCEEDINGS COMMITTEE

1952

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THE MANAGER GOVT. OF INDIA PRESS, NEW DELHI
THE MANAGER OF PUBLICATIONS, DELHI, 1953

Price Rs. 2, annas 4 or 3sh. 9d.

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CHAPTER I

Introductory

The law relating to banking companies in India, as distinguished from the law relating to companies in general, is essentially practical and based on difficulties actually experienced in this country. It is the result of legislation undertaken to meet situations as and when they arose. There is no precedent for similar legislation in England. In this respect it is unlike the Indian Companies Act which is based on the English Statutes.

2. It is, therefore, no disparagement to the law relating to banking companies in India to say that it is made up of shreds and patches. The central patch was Part XA of the Indian Companies Act, 1913, which was introduced by the Indian Companies (Amendment) Act No. XXII of 1936. The amendment was not considered adequate and in 1939 the Reserve Bank of India sent a draft Bank Bill to the Government of India and it was only after many vicissitudes, including the Second World War, epoch-making constitutional changes and the partition of the country that the Bill became law in 1949.

3. At that stage sufficient experience had not been gained, or data collected, in regard to the liquidation of banking companies and the problems connected therewith which were peculiar to conditions prevailing in this country. Neither the original draft of the Bill nor the Banking Companies Act, 1949, contained any special provision relating to the liquidation of banking companies, which continued to be governed by the Indian Companies Act.

4. Realizing that some time may elapse before the Banking Bill became law the Government of India took up separately some of the problems which required immediate solution. With a view to simplifying the work of the Registrars in determining whether a company was a banking company or not, the Indian Companies (Second Amendment) Act was passed in 1942 by which a proviso was added to section 277F to the effect that any company, which used as part of its name the word 'bank', 'banker' or 'banking' should be deemed to be a banking company. The years 1942 and 1943 witnessed the flotations of a number of banks, mainly as a result of the inflationary conditions created by the war and the capital structure and the terms of managerial appointments of some of them showed highly undesirable characteristics. The Indian Companies (Amendment) Act, 1944 was, therefore, passed adding a new section 277HH to the Companies Act and amending section 277I. The expansion of banking during the war

years was attended by certain undesirable trends among which were, the tendency amongst a few banks to get the control of non-banking companies by acquiring their shares at inflated prices, the interlocking of shares between banks and other companies, the grant of large loans to persons connected with the management of banks without adequate security, extensive window-dressing at the time of preparing balance-sheets and, in general, a tendency to utilise the banks' funds to the detriment of the interests of the depositors. To meet this problem the Banking Companies (Inspection) Ordinance No. IV of 1946 was promulgated on the 15th January, 1946. The Ordinance empowered the Central Government to direct the Reserve Bank of India to inspect any banking company. It also empowered the Government to take certain corrective action, where necessary, if, after perusing the Reserve Bank of India's report, it considered that the affairs of a banking company were being conducted to the detriment of the interests of its depositors. The Government was also empowered to prohibit a banking company from receiving fresh deposits or to refuse its inclusion as a Scheduled Bank or, if it had already been so included, to direct its exclusion from the Schedule.

5. Soon thereafter, the problem of indiscriminate opening of branches by banking companies was brought to the notice of the Central Government. Branch banking in India had developed unevenly with the result that while large cities like Bombay and Calcutta had more banking facilities than necessary, there were many other places where such facilities were inadequate. It was necessary to prevent the indiscriminate opening of branches by banking companies irrespective of their size and financial status. The portion of the Draft Bill relating to the opening of branches by banking companies, with modifications, was passed as an Act called the Banking Companies (Restriction of Branches) Act (XXVII of 1946). The Act received the assent of the Governor General on the 22nd November, 1946.

6. In order to deal with certain features in the banking situation requiring urgent attention, an Ordinance No. XXV of 1948, entitled "The Banking Companies Control Ordinance" was promulgated. This Ordinance conferred on the Reserve Bank of India power to control advances by banking companies and to impose certain restrictions on loans and advances. It was also provided that the Court shall appoint the Reserve Bank of India Official Liquidator of a bank on an application made by the Reserve Bank of India in that behalf. The Reserve Bank of India Act was amended to enable it to make advances to a banking company on such security as it considered sufficient and provided that whenever such loan was granted, the Reserve Bank of India would have a first charge on the assets of the banking company which has been ordered to be wound up.

7. On the 10th March, 1949, the Banking Companies Act received the assent of the Governor General after the Bill had lapsed in October, 1945, had been withdrawn in 1948 and reintroduced later in 1948. The Act introduced a system of licensing of banks and gathered within its fold the piece-meal legislation undertaken in the interim including the provision for the appointment of the Reserve Bank of India as Liquidator on its application.*

8. By 1949 the failure of banking companies and their liquidation presented a serious problem as will appear from the facts mentioned in the review of banking companies in liquidation given in Chapter II. Government realized that special provisions were necessary for the speedy disposal of winding-up proceedings of banking companies. The Banking Companies (Amendment) Ordinance, 1949, was promulgated accordingly. The provisions of the Ordinance were embodied in Act XX of 1950, with certain modifications. An opportunity was also taken to include in the amending legislation provisions for facilitating the amalgamation of banking companies and certain other important modifications found necessary as a result of the actual experience of the administration of the Act.

9. The Act (XX of 1950) proceeded on the basis that banking companies stood on a footing different from other companies. In this connection it may be pointed out that a bank is financed mainly by money received from depositors, who, unlike shareholders, have no voice in the management and no control over the affairs of the bank. Further, the business of a bank is to lend money, and such loans may be given to a large number of persons. When a bank is ordered to be wound up only a small percentage of the debtors settle their debts without being dragged into Court. After liquidation, the prevailing feeling among the debtors of a bank is that they need not hurry to pay their debts and it is usual for them to resort to delaying tactics. Before the Banking Companies (Amendment) Act XX of 1950, was passed, the Official Liquidator had to file many suits against the debtors of the bank in several courts all over the country, and it took a long time before decrees were obtained. This difficulty was partly met by the Amending Act which conferred exclusive jurisdiction in winding-up proceedings of a banking company on a High Court. This

*Pakistan has two similar Acts. Banking Companies (Control) Act XXII of 1948, as amended by Act XXVIII of 1950, contains in Section 13 a provision for the appointment of the State Bank as Liquidator on its application. Section 15 (3) of the Act also provides that if a banking company has made default in complying with any requirements of the Act or any rule or order made thereunder, the State Bank shall, by notice in writing, make a demand on the banking company to comply with the said requirement within thirty days from receipt of the notice, and, if the banking company fails to do so, the State Bank may apply to the Court for an order directing the winding up of such a banking company ; and where such an application is made, the Court shall make an order accordingly.

According to the information available the Punjab and Kashmir Bank Ltd., was placed under provisional liquidation on an application made by the State Bank of Pakistan under Section 15 (3) of the Act. It is reported that the Sylhet office of the Sylhet Loan and Banking Co. Ltd., Silchar (Assam) has also been put into liquidation by the State Bank of Pakistan.

exclusive jurisdiction was extended to all questions which "relate to or arise in the course of the winding up of the company". The interpretation of this provision is not free from difficulty and we have suggested clarification.* The amendment, however, did not go far enough. The Liquidator, no doubt, could proceed against all his debtors in one Court instead of being compelled to resort to different Courts throughout the country, but he could not avoid the expense and delay involved in adopting the normal procedure of filing suits or taking other proceedings against the debtors, albeit in the same Court. The Act also provided that all proceedings of the above description pending in any other Court, at the date of the commencement of the Act, should be automatically transferred to the winding-up Court. It does not, however, provide for the transfer of proceedings by or against a company, in respect of which an order for winding up has been made after the commencement of the Act. We have attempted in the following chapter to deal with the above difficulties arising out of the Amendment Act XX of 1950. Owing to these and other difficulties the liquidation of banking companies has not proceeded as expeditiously as was expected.**

10. With a view to examining the difficulties and defects in the existing liquidation procedure, and in implementing the schemes of arrangement sanctioned by Court and to suggest suitable modifications, this Committee was constituted by the Government of India, Ministry of Finance, Department of Economic Affairs, by Resolution No. F. 4 (109)-F. I/51, dated the 16th July, 1952. The composition of the Committee was as follows:—

(i) Shri D. N. Mitra.—*Chairman.*

(ii) Shri R. Mathalone, Bar-at-Law, Court Receiver and Liquidator, High Court, BOMBAY.—*Member.*

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*See Chapter III—para 42.

**The unsatisfactory position is thus stated in an article in the periodical "Commerce" dated 26th July, 1952.—

"With a view to facilitating speedy disposal of winding-up proceedings the High Courts of the area where the registered office of a banking company or the principal office of a foreign banking company is situated, is vested with full powers to entertain any matter relating to winding-up proceedings. The Court has powers to decide all claims by or against banking companies. The Court may also punish offenders in connection with companies which are being wound up, after holding a summary trial. In any proceedings for the winding up of a banking company to which the Reserve Bank is not the official liquidator, the Bank may tender such advice as it may think fit. District Magistrates have been vested with powers to enable the official liquidator to take into custody all the property, effects, claims, etc., of a bank in the process of liquidation. The High Court is vested with powers to make rules regarding the mode of proceedings to be had for civil or criminal claims which are to be decided under the provisions of Part III or Part IIIA of the Banking Companies Act.

Despite these extraordinary powers vested in the High Court to expedite disposal of winding-up proceedings, it has been found, in actual practice, that there has not been any commendable progress in the direction desired."

(iii) Shri R. C. Deb, Attorney-at-Law, CA

(iv) Shri R. K. Desai, Bar-at-Law, Deputy
Bank of India, CALCUTTA.—*Member-Secretary.*

The terms of reference are:—

(1) To review the progress of bank liquidations during recent years and consider the need for devising further special provisions for the simplification and speedy disposal of winding-up proceedings and to minimise the costs thereof.

(2) To review in this connection the present law and procedure governing such proceedings.

(3) To recommend changes in law and procedure that may be considered necessary for expediting liquidation of banking companies and for the more effective and expeditious enforcement of liabilities of Directors and other officers of the companies.

(4) To examine the administrative machinery that is now available and recommend necessary changes therein with a view to facilitating speedy disposal of proceedings in liquidation.

(5) To examine the feasibility of establishing a statutory relationship between the Reserve Bank of India and banking companies in liquidation and the liquidators thereof and, if deemed advisable, to recommend necessary legislative measures for the purpose.

(6) To consider the position of banking companies working under schemes of arrangement with reference to (i) the powers of the Court to give directions for enforcement thereof, and (ii) the feasibility of establishing a statutory relationship between the Reserve Bank of India and any person or persons responsible for the execution of such schemes; and to recommend any necessary changes in the law.

(7) To make any other recommendations that are incidental to the above.

11. Shri R. C. Deb attended the meetings of the Committee in Calcutta and in Delhi. The headquarters of the Committee was in New Delhi, but the members of the Committee visited Calcutta, Bombay, Madras and Simla and examined several members of the legal profession, businessmen, accountants and others. The questionnaire issued by the Committee is set out in Appendix C.

12. We wish to express our thanks to the Hon'ble the Chief Justice of Bombay, Shri N. R. Sarkar and Shri P. Brahmayya for making office accommodation available to us during our tour and to the Reserve Bank of India for loan of books and for supplying information relating to our enquiry. Some of the learned Judges of the High Courts were pleased to make informal suggestions bearing on the subject of this enquiry. We are grateful to the learned Judges, the members of the legal profession, businessmen, accountants and others who gave us valuable assistance in the course of our investigation. We also received memoranda from various public bodies and individuals which were found helpful.

13. Having regard to the scheme of the Banking Companies Act and the terms of reference, our approach to the questions before us has been purely practical and limited to banking companies. We have, however, studied and kept before us the recommendations of the Indian Company Law Committee.

CHAPTER II

Review of banking companies in liquidation and under schemes of arrangement

14. Information regarding banks in liquidation and the progress of liquidation proceedings has been difficult to obtain. Under Section 182 of the Indian Companies Act, an Official Liquidator has to present to the Court, twice a year, an account of receipts and payments; a copy of the account is filed in Court and another copy is filed with the Registrar of Companies. These accounts do not present a comprehensive picture of the progress of liquidation proceedings and we had to resort to other sources. The information available to us is, more or less, complete in respect of the High Courts of Bombay and Calcutta, but with regard to other High Courts we had to depend on such information as was available to the Reserve Bank of India.

15. A list of High Courts in India is given in Appendix 'A'. Information has been obtained with regard to the following High Courts in Part A States, namely, Allahabad, Assam, Bombay, Calcutta, Madras, Nagpur and Punjab and also with regard to the following High Courts in Part B States, namely, Hyderabad, Mysore, PEPSU, Saurashtra, Travancore-Cochin. Within the limited time at our disposal we have not been able to collect information with regard to Part C States. We believe, however, that the information available presents a comprehensive view of the present position regarding proceedings in liquidation of banks throughout India and the omissions are not of material significance for the purpose of this review.

16. In Appendix 'B' we have summarised the number of banks which have suspended payment, the banks in liquidation, and the banks working under schemes of arrangement, including their total outside liabilities. These summaries are in respect of the various High Courts mentioned therein commencing from the year 1926. Where exact dates were not available a note has been made to this effect. Although it cannot be stated that the information is exhaustive, we believe that the summaries are sufficiently relevant and adequate for the purpose of this review.

17. The number of banks which suspended payment during the years 1926—52 total 351. In addition to these, 11 banks in Travancore-Cochin and 2 banks elsewhere have suspended payment but detailed

information relating to them is not available. The amount of outside liabilities involved in the failure of the above 351 banks total about Rs. 96,86 lakhs. Speaking comparatively, the failure of banks in Travancore-Cochin, which total 123, are the most numerous, but the total amount of outside liabilities involved is small. Among these there is only one large company the liquidation of which is nearing completion.

18. The failures which are most significant from the point of view of derangement of economic life, particularly of middle class depositors, have occurred in Calcutta, Madras and Punjab. In Calcutta 91 banks have failed with total outside liabilities of about Rs. 25,57 lakhs. The total number of failures in Madras is 83 with outside liabilities of about Rs. 1,53 lakhs. In Punjab the failure of 24 banks involved outside liabilities of the large figure of about 61,82 lakhs. The major part of these failures occurred from the year 1947 onwards This was brought about partly by the fact that the public lost confidence, after the Second World War, in institutions which, during the war years of inflation, received substantial deposits which the management did not invest judiciously. There were other reasons as well which contributed to these numerous failures amongst which may be mentioned the economic effects of the partition of the country in 1947. In Punjab, those banks which had their major assets in what is now West Pakistan, suffered a disaster in the months immediately following the date of partition.

19. It may be noted that 23 banks had suspended payment between the years 1926 to 1937, including 13 in Madras, but the amount involved by way of outside liabilities was small and did not exceed Rs. 5 lakhs. In the years 1938 and 1939 the failure of 46 banks, including 20 in Madras, involved outside liabilities to the extent of Rs. 3,14 lakhs. It appears, however, that in the liquidation proceedings of one of these banks, which was a Scheduled Bank, the assets which totalled about Rs. 2,64 lakhs have been realised to a large extent, and the liquidation proceedings are now nearing completion. The bank benefited by the rise in the value of properties during the war years. From 1940 to 1946 the failure of 95 banks, including 18 in Madras, involved total outside liabilities of about Rs. 93 lakhs.

20. A major disaster in the banking circle in India started early in 1947 and there was a steady procession of bank failures for the next 5 years. Between 1947 and 1951 no less than 180 banks suspended payment involving total outside liabilities of about Rs. 92,63 lakhs. The main areas affected by this disaster were Calcutta, Punjab,

Bombay and Madras. The following table will give an idea as to how the losses consequent on these failures were distributed in these areas:—

(000's omitted)

Year	Calcutta		Punjab		Bombay		Madras		Total relating to banks in India	
	Total No. of banks	Amount of outside liabilities	Total No. of banks	Amount of outside liabilities	Total No. of banks	Amount of outside liabilities	Total No. of banks	Amount of outside liabilities	Total No. of banks	Amount of outside liabilities
1947	17	2,33,16	6	12,12,88	3	1,85,76	3	56,12	33	16,93,66
1948	24	7,81,63	11	48,56,49	1	...	2	10	42	56,42,26
1949	25	6,95,28	5	1,05,38	2	2,52	8	27,60	48	8,89,45
1950	8	5,50,61	1	5,47	3	20,08	14	23,99	33	6,20,50
1951	9	2,91,51	1	...	3	17,36	5	1,04	24	4,17,48
Total	83	25,52,19	24	61,82,22	12	2,25,72	32	1,08,95	180	92,63,35

It will be seen from the above table that the largest number of banks which failed during the above period was in Calcutta where 83 banks suspended payment with total outside liabilities of about Rs. 25,52 lakhs. In Punjab during the years 1947 to 1950, 23 banks failed involving total outside liabilities of about Rs. 61,82 lakhs.

21. Out of the 351 banks referred to above which suspended payment, 321 banks were taken into liquidation and in the case of the remaining 30 banks schemes of arrangement were sanctioned by the Court. In Calcutta, 78 out of 91 banks went into liquidation; in Madras, the entire lot of 83 banks were ordered to be wound-up. In Punjab, out of 24 banks, 12 were taken into liquidation and the remaining 12 were sanctioned schemes of arrangement. In the case of the banks which were ordered to be wound-up, the outside liabilities in Calcutta amounted to about Rs. 19,61 lakhs and in Punjab to about Rs. 2,12 lakhs.

22. The results achieved by the liquidation proceedings of banks have been far from satisfactory. A review of the progress of bank liquidations in Calcutta would demonstrate the various problems and difficulties which obstruct the course of liquidation. We, therefore, set out, in some detail, the main features of the liquidation of banks in Calcutta from the year 1926.

Review of banking companies in liquidation in Calcutta.

23. Out of 78 banks in liquidation the Official Receiver, who is a West Bengal Government Official, has been appointed Official Liquidator of 44 banks. The Official Liquidators of the remaining banks are private parties, usually members of the bar or auditors. Before 1937, the Official Receiver was not called upon to undertake the work of liquidation. In 1948 the post of Official Receiver was combined with that of the Official Assignee. Besides acting as Official Receiver and Official Assignee and Official Liquidator of banks, this Official is in charge of the liquidation of about a hundred companies, including 14 Insurance Companies. The outside liabilities of the banks which are under the charge of the Official Receiver amount to about Rs. 2,16 lakhs.

24. It appears that under the provisions of Section 176, Indian Companies Act, the Official Receiver was appointed Official Liquidator, from time to time, whenever a vacancy in the office of an Official Liquidator occurred. He was also appointed Official Liquidator in cases where, owing to paucity of assets, private persons were unwilling to undertake the office. The result has been that he was unable, in several cases, to take possession of the assets of the bank for want of funds. It appears that in the case of 20 banks under his charge, he could not get possession of even the books of account and in some cases no assets at all could be collected, except some furniture, and the directors could not be traced with the result that most of the book debts became time-barred. Most of these 20 banks had their head offices in Pakistan. Of the remaining 24 banks, only 6 banks furnished complete records. It appears that the maximum liquid assets which came in his hands at the time he took possession, in any bank, did not exceed Rs. 3,500.

25. Under the circumstances, it is not surprising that the Official Receiver's total realisations have amounted to only about Rs. 6,14 lakhs, as against the total outside liabilities of about Rs. 2,16 lakhs and the costs of management, including law costs, have been in proportion substantial. In a large number of cases, he has not been able to settle the list of creditors or the list of contributories nor has he been able to file the preliminary report under Section 177-B of the Indian Companies Act or under Section 42 of the Banking Companies Act. He has also been unable to file his six-monthly accounts with the Court.

26. Out of the remaining 34 banks in liquidation which are under the charge of private Official Liquidators, two have been dissolved. Information available to us with regard to the 32 banks discloses that their total realisations do not exceed Rs. 1,42 lakhs. One bank alone

accounts for over half this figure. The costs of management (excluding legal expenses and Liquidators' commission) in proportion to realisations are heavy, ranging from 10 to 80 per cent. The total of such costs of management amount to about Rs. 15 lakhs. In addition, the total legal expenses incurred by Liquidators amount to about Rs. 10 lakhs. A further item of expense is the commission payable to Official Liquidators. This commission is generally sanctioned at a flat rate of 5 per cent. on realizations which include cash taken charge of by the Liquidator at the time of taking possession. In the case of one bank it was sanctioned at 2 per cent. on cash in hand and bank balances which together totalled about Rs. 30 lakhs, and on sale of G.P. notes. On remaining realizations the rates sanctioned were 5 per cent. on the 1st 25 lakhs, 4 per cent. on the next 25 lakhs and 3 per cent. on the rest. It may be noted that in the last mentioned case the commission so far earned by the Liquidators has amounted to about Rs. 2·57 lakhs, which, in effect, is about half the total commission (amounting to about Rs. 5·72 lakhs) earned by the Liquidators of all the banks in this series. Every Liquidator employs a separate staff and maintains separate office premises. The salary paid by all the Liquidators to their staff totals about Rs. 21 thousand, per month, and the total office rent paid per month amounts to about Rs. 6 thousand. In some cases, Official Liquidators have been allowed to use motor cars belonging to the banks. It will be seen from the above that the proportion of disbursements to realisations is very substantial, the average being about 20 per cent. It would clearly be to the advantage of the conduct of liquidation if the staff and the premises be concentrated in one office under one Liquidator.

27. The information available to us discloses that only one bank, out of the 78 banks in liquidation in Calcutta, has declared a dividend. This bank declared a dividend of 100 per cent. to preferential creditors and 10 per cent. to depositors. We are informed that this dividend was declared prior to adjudication of the rights of a large secured creditor. We understand that two other banks are considering the declaration of a dividend. It will thus be seen that liquidation of banks in Calcutta has resulted in very little benefit to the large number of depositors involved.

28. The reasons advanced by Liquidators for the slow progress of liquidation proceedings are:—

(i) The advances made by the banks were mostly unsecured and a great deal of litigation had to be undertaken which proved expensive and infructuous.

(ii) In many cases for want of funds it was not possible to take the necessary legal proceedings for realization of assets or for misfeasance against directors.

(iii) In many cases the Liquidators were unable to enforce their remedies, which were barred by limitation, before their investigations were complete and in some cases before they took possession of the assets of the banks.

(iv) Contributories could not be traced and the unpaid capital of several companies could not be recovered.

(v) In the case of small banks where the advances are for small amounts, legal expenses for realisation were out of proportion to the amounts involved. For this reason many of the claims had to be given up.

(vi) Directors invariably delayed the submission of their Statements under Section 177-A, Indian Companies Act, and this hampered the progress of liquidation proceedings.

29. We have attempted, in the above paragraphs, to give a summary of the deplorable state of affairs regarding bank liquidations in Calcutta. The position in Bombay is less unsatisfactory. The total outside liabilities of the 14 banks in liquidation in Bombay amount to about Rs. 2,30 lakhs. The realizations so far amount to about Rs. 1,09 lakhs. The Court Receiver and Court Liquidator of Bombay, who is a permanent official of the High Court, is generally appointed Official Liquidator of banks. He is assisted by an adequate and experienced permanent staff to manage all liquidations and there is one office premises. The rates of commission, which are fixed by the rules of the High Court, are on a sliding scale and comparatively small. These factors help to reduce the costs of liquidation and to expedite the proceedings. A glaring example of the wide divergence in the costs of liquidation between Calcutta and Bombay is the case of one bank in Calcutta where the Liquidators realised about Rs. 85 lakhs and earned a commission of about Rs. 2·57 lakhs, whereas on the same amount of recoveries by the Liquidator the commission under the Bombay rates would not have exceeded Rs. 86,600.

Banking Companies under Schemes of arrangement.

30. In the following paragraphs of this Chapter the main features of the banks working under schemes of arrangement are set out. As stated above, 30 out of 351 banks, which suspended payment, were sanctioned schemes of arrangement. Of these, 13 were in Calcutta and 12 in Punjab, but, whereas in Calcutta the outside liabilities of such banks amounted to about Rs. 5,95 lakhs (as against about Rs. 19,61 lakhs in the case of banks in liquidation), in Punjab, the 12 banks under schemes of arrangement involved outside liabilities of about Rs. 59,70 lakhs (as against about Rs. 2,12 lakhs in the case of banks in liquidation). On account of the unfortunate situation in which

Punjab banks were placed following the partition of the country, they were readily sanctioned schemes of arrangement. It was believed that the managements concerned would be able to realise the assets more expeditiously than Liquidators from debtors, most of whom were refugees. All of them, except one, were permitted to receive fresh deposits by way of a separate fund and as an initial step towards reconstruction. In Calcutta out of 13 banks, 10 were similarly permitted to receive fresh deposits.

31. The state of affairs relating to the 13 banks in Calcutta working under schemes of arrangement is far from satisfactory. Out of the total outside liabilities of about Rs. 5,95 lakhs only about Rs. 52 lakhs have been distributed to the depositors. The total amount which the banks undertook to pay under the various schemes was about Rs. 3,92 lakhs. None of the banks kept pace with the provisions for periodic payments contained in the schemes and some banks applied for revision of the schemes so as to reduce the amounts payable under the schedule.

According to the decisions given by two High Courts a banking company under a scheme of arrangement continues to be governed by all the provisions of the Banking Companies Act and the Reserve Bank of India Act applicable to a running bank. They are under an obligation to comply with the provisions of these Acts relating to capital requirements, filing of various returns, depositing of specified amounts, publishing balance sheets, etc. Almost all the banks under schemes of arrangement have reported various difficulties in complying with these provisions. They have applied for exemptions from some of these provisions. This difficulty has arisen in some cases not merely with regard to the "old" or "closed" fund but also with regard to the "new fund" composed of the fresh deposits which the banks were permitted to receive. Speaking generally, banks working under schemes of arrangement in Calcutta have failed to achieve their objects and no advantage has accrued to the depositors by saving the banks from liquidation. In all cases the progress of realisation was found to be extremely slow, there was heavy expenditure in maintenance of staff, and protracted litigation in Courts all over the country had to be undertaken with its attendant delays and expenses.

32. The position of the 12 banks in Punjab working under schemes of arrangement is as follows. Almost the entire amount of the total outside liabilities of about Rs. 59,70 lakhs is accounted for by 8 of these banks which suspended payment immediately after partition. The total liabilities payable under the schemes amount to about Rs. 10,87 lakhs and the amounts repaid upto the 31st December, 1951, amount to about Rs. 7,76 lakhs. Speaking generally, the banks were able to make payments of the 1st instalments due under the schedule-

of payments. One bank expects to implement its scheme by the end of this year, two others have reported their ability to pay 70 per cent. of the deposits before the end of this year. With regard to compliance of the provisions of the Acts relating to banking companies, various difficulties were reported and in most cases banks have been exempted from some of the provisions of the Banking Companies Act and the Reserve Bank of India Act. The banks have reported that it has been difficult to recover their assets as many of their debtors are displaced persons. Further, the Displaced Persons (Debts Adjustment) Act, which came into operation on the 8th December, 1951, provided substantial relief to these borrowers and increased the difficulties of the banks.

CHAPTER III

Minimising costs and expedition of liquidation proceedings

33. The winding up of a banking company as of all other companies involves three main processes:—

(a) investigation of the affairs of the company in relation to the conduct of the directors and other officers,

(b) recovery and realisation of the assets, and

(c) distribution of the realisations amongst creditors and contributories.

34. The problem regarding the last process has not given rise to difficulties in practice for the simple reason that the payment of a dividend to creditors, to say nothing of contributories, has unfortunately been of infrequent occurrence. It is understood that out of 78 banks which are being wound up in Calcutta, one bank only has paid a dividend to its creditors.

35. Under Section 43 of the Banking Companies Act, there is a presumption that the amounts shown in the books of a banking company as standing to the credit of depositors are deemed to be proved without the necessity of any further proof from the depositors concerned, unless the Official Liquidator shows that there is any reason for doubting any particular entry. It appears to have been intended that under this Section depositors should rank for dividend without going to the trouble and expense of filing formal claims. This intention has not been made sufficiently clear and it has been understood by some of the High Courts as dispensing with the proof of a claim only and not with the filing of a claim by the depositor. The Bombay High Court Rules, for example, appear to proceed on the footing that every depositor must file his claim to entitle him to a dividend.*

We think that Section 43 should be amended so as to make it clear that depositors are not obliged to file formal claims with regard to the amounts standing to their credit in the books of the bank and not disputed by the Liquidator. One Liquidator who was in a position to pay half an anna in the rupee to the creditors made the point that Section 43 of the Banking Companies Act, construed as intended,

*See Rule 821-M of the Bombay High Court Rules.

would make the distribution of dividend difficult. Before the above Section was enacted, creditors who did not take the trouble to file formal claims did not rank for dividend. His argument was that if the necessity of filing formal claims is dispensed with, there would be a much larger body of creditors ranking for dividend, because all the depositors as shown in the books of the bank would be entitled to any dividend that may be declared by the Liquidator. He further urged that if the amount available for distribution was small and the number of creditors among whom it has to be distributed large, the amount coming to the share of each creditor would be so small that it would not be a practical proposition to declare a dividend, taking into consideration the expense involved in the formalities of making the payment of a dividend to each creditor. It would be better, therefore, if the necessity to file a claim was not dispensed with, as then only those creditors who have filed their claims would rank for dividend and a larger dividend could be paid by the Liquidator, though to a smaller body of creditors. This argument does not appeal to us. Normally, creditors for large amounts take the precaution of filing their claims in time. The smaller creditors, especially those residing away from the place where the registered office of the bank is situated, and who are sometimes illiterate and not aware of their rights, often omit to file their claims. In principle, it would be wrong to give preference to big creditors at the expense of small creditors. We were informed by some of the witnesses that the small depositor is an object of particular solicitude in some countries where he is paid in full as a preferential creditor.* We are of opinion that there should be a similar provision in the banking laws of this country, and we recommend that every depositor or in any event every depositor in a savings bank account, whose balance in the books of the bank at the time of the winding up order does not exceed Rs. 100, should have priority for the full amount of his claim. They should, of course, come after the preferential creditors mentioned in Section 230 of the Indian Companies Act.†

**Switzerland.*—The Banking Law as passed in November, 1934, was given shape by an executive order of the Federal Council on the 26th February, 1935. The Law as supplemented by the order came into effect on the 1st March, 1935. The Banking Law of 1934 provides that savings deposits (including time deposits) shall have a prior claim up to 5,000 francs per depositor, in case of failure of a bank. This Law does not apply to depositors of such Cantonal banks as are afforded separate protection under laws of respective Cantons.

Argentina.—The Banking Law No. 12156 is regulated by a decree passed on the 8th August, 1935. The powers to issue decrees are contained in the Law of Organisation No. 12160 passed on the same date as the Banking Law No. 12156. The Banking Law as passed on the 28th March, 1935, provides that in the event of failure of a bank savings deposits (which include time deposits) of up to 5,000 pesos in respect of accounts in private names and of up to 10,000 pesos in respect of accounts held by cooperative and mutual benefit societies are entitled to preferantial claim on general assets of the bank, subject, however, to priority of claims of certain other privileged creditors.

†An alternative suggestion has been made that "the system of insurance of deposits as operating in the U.S.A. should be adapted to the needs of Indian banking".

36. The outstanding problem is the expeditious realisation of assets. Such realisations have to be from:—

(a) persons who are indebted to the bank;

(b) directors and officers of the bank in respect of loss suffered by the bank on account of their misfeasance, breach of trust or negligent conduct in the discharge of their duties or otherwise;

(c) contributories in respect of the amounts remaining unpaid on shares.

37. The problem of recovery from directors and the question of investigating their liability is dealt with in Chapter IV.

38. In the case of a bank, the debtors of which are usually numerous and scattered all over the country, the problem of recovery of debts calls for special treatment. The Liquidator's two difficulties are:—

(a) the multiplicity of courts to which he has to follow his debtors;

(b) the multiplicity of proceedings which he has to undertake.

The first difficulty was intended to be met by the Banking Companies (Amendment) Act, 1950. The second and more formidable difficulty remains.

39. The position will be clear from the following illustration. The illustration is based upon the classification of the debts and debtors of a bank (in liquidation) in Bombay:—

Amount of debt (1)	Number of debtors (2)	total of debt (3)
		Rs.
1. Below Rs. 250	750	1,60,000
2. Between Rs. 251 and Rs. 500	500	2,00,000
3. Between Rs. 501 and Rs. 1,000	300	2,45,000
4. Over Rs. 1000	250	2,50,000
TOTAL	1800	8,55,000

40. In the above case the Liquidator can, on the liberal construction given to Sections 45A and 45B by an Appeal Bench of the Bombay High Court,* proceed against his recalcitrant debtors in one Court, namely, the Bombay High Court and avoid recourse to a multiplicity of Courts. Even so, he has to institute a large number of suits or summary proceedings in the High Court and there is no way of avoiding multiplicity of proceedings. The costs of a summary suit in the Bombay High Court would amount to about Rs. 250. We are informed, since June, 1952, by virtue of rules framed by the Bombay High Court under Section 45G, the Liquidator can, in all cases where the claim does not exceed Rs. 1,500, take out a chamber summons supported by an affidavit and made returnable not later than 7 days after service thereof. The costs of such chamber summons, if uncontested, is about Rs. 55 but the Judge may adjourn the matter to Court in which event the costs would be increased. The vires of these rules is, however, open to question.

41. Section 10 of the Banking Companies (Amendment) Act, 1950, introduced into the parent Act the aforesaid Sections 45A and 45B in their present form. These Sections were intended to confer power on the winding-up Court to decide "All claims made by or against any banking company (including claims by or against any of its branches in India) and all questions of priorities and all other questions whatsoever whether of law or of fact, which may relate to or arise in the course of the winding up of the banking company coming within the cognizance of the Court". As has been stated above, the Appeal Bench of the Bombay High Court has given to the Sections a liberal construction. It was held that the winding-up Court has jurisdiction to try and determine all claims by the bank in liquidation against its debtors, whether arising before or after an order for its winding-up. The contrary view, however, is not untenable and has been well stated in the judgment of the High Court on the original side, which was reversed on appeal. The following are quotations from the judgment:—

> "The present proceedings is merely a suit filed by the banking company for enforcement of its claim against a debtor and cannot be said to be relating to the winding-up of the banking company or arising out of the winding-up of the banking company. In my judgment it is intended to confer exclusive jurisdiction upon this Court to try proceedings which have a direct relation with the

*See The Associated Banking Corporation of India Ltd., Vs. Nazaralli Kassambhai & Co., 54 Bombay Law Reporter p. 22. See also the Discount Bank of India Ltd., Vs. Tirloki Nath etc. LIV (1952) The Punjab Law Reporter p. 335.

winding-up of a banking company, or which arise out of the winding-up of a banking company, in that the rights which are to be enforced are the direct result of the order of winding-up passed by this Court".

"It is argued that the provision of Section 45A was incorporated with a view to facilitate the disposal of the proceedings which may arise in the course of the winding-up of a banking company, including enforcement of the claims of the company subsequent to the winding-up. Whether or not that was the intention of the Legislature, if the Legislature has qualified the expression 'matter' in the manner it has done in Section 45A, it is difficult to hold that notwithstanding that qualification all claims by a banking company subsequent to the order of winding-up, whether or not they relate to or arise out of the winding-up, shall be dealt with by the High Court within the jurisdiction of which the registered office is situate. In my view the claim being less than Rs. 25,000 and the suit having been filed after the publication of the notification by the State of Bombay extending the jurisdiction of Bombay City Civil Court, is not maintainable in this Court".*

42. The matter has not yet come before the Supreme Court. Almost all the witnesses who appeared before us were in favour of the principle that all proceedings by or against a banking company in liquidation should be instituted in the winding-up Court**. It is apprehended that an adverse decision by the Supreme Court or a dissentient judgment of any other High Court may imperil the scheme of the amending Act.† We stress the necessity of legislation to make it absolutely clear that all claims of a banking company against its debtors are comprised in "matter relating to or arising out of the winding-up of a banking company" within the meaning of the Act. We recommend that an explanation should be introduced to the effect that "matters relating to or arising out of the winding-up of a banking company" in Section 45A and "all questions of priorities and all other questions whatsoever, whether of law or fact, which

*54 Bombay Law Reporter, pages 23 *et seq.* The view taken in the Court of first instance has been supported by Mr. Solomon Judah. [See Bombay Law Reporter (Journal Vol. 54—p. 74].

**The Indian Company Law Committee approves of the principle—see para 207.

†The germ of such dissent is contained in a judgment of the Assam High Court (Pioneer Bank Ltd. Vs. Mrs. Gyan Koer and others, A.I.R. 1952 Assam—p. 82).

may relate to or arise *in the course of* the winding-up of the banking company" in Section 45B, mean and include and will be deemed always to have meant and included all claims by or against a banking company whether arising before or after an order for its winding-up. It may be observed in passing that the additional words "in the course of" occurring in Section 45B but not in Section 45A have given rise to controversy, which may be put to rest by suitable drafting amendments.

43. By Section 11 of the Banking Companies (Amendment) Act 1950, it was attempted to give further effect to the principle that there should be no multiplicity of Courts. The Act after providing that High Courts, to the exclusion of other Courts, shall have jurisdiction in the winding-up of banking companies, provided in Section 11 that "where any proceeding for the winding-up of a banking company or any other proceeding, whether civil or criminal, which has arisen out of or in the course of such winding-up is pending in any Court *immediately before the commencement of this Act*" the same shall automatically stand transferred to the winding-up Court. The provision has come in for criticism from two points of view. It has been said, on the one hand, that the High Court has become overloaded with cases which have been transferred under Section 11 of the Act.* The other point of view is that the Section does not go far enough. It does not cover the transfer of pending proceedings in cases where the winding-up order is made after the commencement of the amendment Act†

44. The provision regarding transfer contained in Section 11 of the Amendment Act was a transitory provision. The question was raised as to whether a provision for automatic transfer should not be perpetuated.

45. In our view there is no justification for a sweeping provision of the description contained in Section 11 except, perhaps, as a transitory provision. Automatic transfer may, without any particular benefit to either party, complicate the position. To take a simple illustration, where, in a pending suit, the examination of witnesses has been completed and counsel for all parties heard and judgment reserved, it would be a great hardship to all parties if the suit is transferred and heard *de novo*. Further, there are many cases in which a claim arising out of or relating to winding-up is mixed up in the same suit with another claim or claims by or between third

*Bank of Calcutta *Vs.* Jadunath Roy & others—56 C.W.N.—p. 92..

†Hemanga Coomar Mookherjee & others *Vs.* M. C. Chakravarty—56 C.W.N.—p. 637.

parties in which the banking company has no interest. The automatic transfer of such suits may, in many cases, involve hardship to third parties without any corresponding benefit to the bank.

We are, therefore, of opinion that it should be left to the discretion of the winding-up Court whether it should transfer pending proceedings to itself or not. All pending civil proceedings should be automatically stayed till the winding-up Court exercises its discretion in favour of transfer or otherwise.* It should be made clear in any legislation, which may be undertaken, that legal proceedings liable to transfer include not merely proceedings arising out of or in the course of the winding-up but all suits or other proceedings to which the banking company is a party.

46. We consider that the provisions for transfer contained in Sections 22-24 of the Civil Procedure Code are not adequate. For example, in certain circumstances the application for transfer has to be made "to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate" which may not be the winding-up Court.

We, **therefore, recommend:—**

(1) Where any proceeding of the above description is pending in any Court, the same shall be automatically stayed;

(2) The Liquidator should, as soon as practicable, submit to the Court a report containing a list of pending proceedings with particulars;

(3) Before making an order on such report, the Court may, in its discretion, direct that notice be given to any party who the Court thinks should be heard or may dispense with such notice;

(4) The Court, after considering the report and hearing the Liquidator and any party appearing pursuant to the notice, may make an order for the transfer of all or any of such proceedings to itself and upon such transfer the Court shall have seisin of the transferred proceedings;

(5) The above provisions should not apply to the transfer of any appeals pending in a High Court or the Supreme Court;

*"Where a winding-up order has been made, the combined effect of Sections 177 and 174 is that such order operates automatically as stay of all actions, executions, distresses and sequestrations as against the company subject to the discretion of the winding-up Court" See Palmer's Company Law, 18th Edition—p. 450. The references are to the English Companies Act, 1929. The corresponding Sections of the English Companies Act 1948, are Section 622 and 231. See also Section 171 of the Indian Companies Act.

(6) If the Court does not make an order for transfer the provision for stay shall cease to have effect and the Court in which the proceedings are pending will have jurisdiction to dispose of the same.

If the above recommendation is accepted, drafting changes will be necessary as to the definition of "Court" in Section 45A of the Banking Companies Act.

47. We now proceed to consider the major evil, namely, multiplicity of proceedings, which is one of the chief causes for delay and expense in liquidation procedure. Every Liquidator finds it difficult to realise the assets of a banking company under his control within a reasonable time, as the ordinary legal machinery for collecting debts by filing suits is slow and subjects to delaying tactics on the part of debtors. We have given serious thought to this matter and have come to the conclusion that a procedure for settlement of a list of debtors on the analogy of settlement of the list of contributories under the Indian Companies Act is possible and would result in saving of much time and costs. The germ of our suggestion is contained in the following observations of their Lordships of the Calcutta High Court:—

> "The Companies Act, for example, in Section 186 provides for the recovery of what is due from contributories and no suit is necessary. But there is no provision in these Acts entitling a liquidator to recover debts from debtors of the bank in any way other than the ordinary way, namely, by suit".*

As the suggestion involves a departure from the present procedure for recovery of debts by Liquidators, we have worked it out in some detail with the assistance of able lawyers and we have attempted a comprehensive draft of the clauses setting out fully the law and the procedure to be adopted. We are very glad to say that our suggestions were well received by all the witnesses who appeared before us and have the approval of high judicial authority. We set out below our draft.

List of Debtors

I. The Official Liquidator shall, from time to time, make out and file in the Court lists of debtors to the banking company, each list to be verified by an affidavit. All such lists shall be filed in Court by the Official Liquidator as soon as practicable after his appointment but not later than six months from the date of the winding-up order except with the leave of the Court.

*See Sri Bank Ltd. *Vs.* P.C. Mukerjee & others—55 C.W.N.—Page 401.

II. Any such list may be varied by the Court at any time.

III. In every such list the Official Liquidator shall distinguish between the debts for which the banking company holds any security other than a personal security and the debts for which no security or only a personal security is given.

IV. Every such list shall contain the following particulars:—

(a) Names and addresses of the debtors;

(b) Amount of debt due to the banking company by each debtor;

(c) Rate of interest, if any, and the date upto which such interest has been calculated in the case of each debtor;

(d) Description of papers, writings and documents, if any, relating to each debt;

(e) Relief or reliefs claims against each debtor;

(f) In case of secured debts, particulars of the securities claimed by the banking company, and whenever possible their estimated value, and the names and addresses of person or persons, if any, having an interest in the securities or the right of redemption therein;

(g) In case the debt is guaranteed by any person, the name and address of the guarantor or guarantors with particulars as to the extent to which the debt is guaranteed and description of documents, papers or writings in support of such guarantee.

V. If the debtor is adjudged insolvent either before or after he has been included in any such list, but before such list is settled, the name and address of the assignee or the receiver of his estate, as the case may be, should be stated in or added to the list.

VI. If the original debtor dies either before or after he has been included in any such list, but before such list is settled, there shall be substituted in his place the names and addresses of his legal representatives as far as the Official Liquidator is able to ascertain.

VII. On submission of any such list to the Court as aforesaid, the Court shall appoint a date to settle the list and shall direct the Official Liquidator to give notice of such date to all the persons, whose names are set out in such list requiring them to appear on the said date and to show cause, if any, by an affidavit why their names should not be settled on such list for the amounts shown therein against their respective names. The notice referred to above shall be effected through the post office in a registered letter addressed to the debtor at his last known address and shall contain all the particulars mentioned in such list so far as it pertains to the debtor to whom the notice is addressed. Such notice shall be deemed to have been served at the time the same ought to be delivered in due course of delivery by the post office and notwithstanding that the same may be returned by the post office.*

A debtor served with a notice as aforesaid shall be entitled to inspect all papers, writings and documents relating to the claim against him mentioned in any such list.

VIII. On the date fixed for settling any such list or on any adjourned date the Court shall declare any such list as settled in so far as it concerns the persons, who have not appeared or who have appeared and not shown cause, provided that the Court may not settle any such person or persons on the said list if the Court is of opinion that the debt shown against such person or persons is not enforceable in law. If the Court thinks that further inquiry is necessary in the case of any such person or persons the Court may give such directions for further inquiry as it deems necessary and thereafter may pass such orders for the settlement of such person or persons on the list as it thinks fit.

IX. (a) Where any person mentioned in any such list appears on the date fixed for settling the same or on any adjourned date and shows cause, the Court shall hear the objection and may disallow the same or allow it either wholly or in part.

(b) If the Court is of opinion that the objection is of a nature which cannot be disposed of without further inquiry the Court shall adjourn the matter on such terms as to payment into Court or giving security by the debtor as it thinks fit.

(c) Where the Court adjourns the matter, it shall give such directions, as it thinks fit, as to any pleadings to be filed by the parties, discovery and inspection and as to the taking of evidence in Court or in Chambers wholly or in part by affidavit or orally and generally as to the procedure for the expeditious hearing and disposal thereof.

X. In case the Court allows the objection, either wholly or in part, the Court shall also direct that any such list be varied so as to conform to the order of the Court and the Court shall declare the list settled accordingly.

*See Rule 800 of the Bombay High Court Rubes.

XI. (a) At the time of settlement of any such list the Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including reliefs against any guarantor, or in respect of the realisation of any security.

(b) Every such order shall be final and binding for all purposes as between the banking company, on the one hand, and the person against whom the order is passed and all persons claiming under him, on the other, and shall be deemed to be a decree in a suit.

(c) In respect of every such order the Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been granted and the amount of costs awarded and by whom and out of what property and in what proportion such costs are to be paid. Such a certificate shall be deemed to be a certified copy of the decree for all purposes including execution.

XII. (a) In any case in which any such list is settled *ex parte* as against any person, such person may apply to the Court for an order to vary such list, so far as it concerns him, and if the Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for settlement of such list, and that he has a good defence to the claim of the banking company on merits, the Court may vary such list or may adjourn the matter for hearing and final disposal and may give any such directions as provided in clause IX above and thereafter dispose of the same.

(b) No Court shall entertain any such application, if the same is not made within thirty days from the date of the order settling the applicant on any such list or from the date when the applicant has knowledge of the order.

XIII. At the time of settling any such list or at any other time prior or subsequent thereto, the Court shall have power to pass any orders in respect of any debtor on the application of the Liquidator for the realisation, management, protection, preservation or sale of any property given as security to the banking company and shall give such further powers to the Liquidator to carry out the aforesaid directions, as the Court thinks fit.

XIV. The Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by instalments.

48. In our view, the above procedural provisions, if accepted, should be given effect to by legislation and not left to the rule-making power of the High Courts as this may lead to lack of uniformity. Moreover, it is doubtful whether the rule-making power under the Act extends to the making of procedural innovation of the nature suggested above.*

49. We think that the above provision for the settlement of the list of debtors will cover all cases in which the claim of the banking company is for a money debt as appearing in the books of the bank. We think, however, that this procedure should not be utilised in cases where a debt to the bank is secured by a mortgage of immovable property and there are other mortgagees of the same property. In such cases complicated questions of law and fact may arise and it would be more expedient if the rights of all the parties were determined by the Court in a regular suit. In cases where the security consists of immovable property and there are no other mortgagees besides the bank or when the security relates to movable property, no difficulty would arise and the proposed procedure could be usefully employed. There may be other claims also, for example, for specific performance or for unliquidated damages in which it may be difficult for the Liquidator to use the above procedure. The right of the Liquidator in all fit cases to proceed against persons in respect of such claims in ordinary course of law should be preserved. We recommend that there should be a provision in the Act that the above procedure is available to the Liquidator without prejudice to his right with the leave of the Court to file a suit against any person or to take any other proceeding available to him in the ordinary course of law and further that the above procedure may not be availed of by the Liquidator in all cases where there is a debt to the bank secured by the mortgage of immovable property and there are other mortgagees, besides the bank, of the secured property.

Although the above section relating to the List of Debtors is fairly comprehensive, we have omitted to provide for the exercise by the Court of the powers under the Civil Procedure Code of passing interlocutory orders etc. It would appear that the procedure recommended by us would come under Section 141 of the Civil Procedure Code and the Court would have all the powers under that Code which have not been varied or which are not inconsistent with the provisions of the Banking Companies Act. But in order to remove all doubts on the subject we recommend that there should be a separate section in the Banking Companies Act to this effect.

*The opinion has been expressed that under Section 45G of the Banking Companies Act read with Section 2 thereof, the Courts cannot frame rules inconsistent with the Civil Procedure Code.

"The provisions of the Code of Civil Procedure (V of 1908) insofar as the same are not varied or inconsistent with the provisions of this Act, shall apply *mutatis mutandis* to all proceedings under this Act".

50. Our investigations have disclosed that one of the difficulties, which the Liquidator experiences in establishing a claim against a debtor, is to lead evidence to prove the transactions on which a claim is based. Generally, the only evidence in his possession is comprised in the entries appearing in the books of account of the bank. Under Section 34 of the Evidence Act "entries in books of account regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to enquire but such statements shall not alone be sufficient evidence to charge any person with liability". Thus, the Liquidator, in addition to producing the entries in question, has to show further by some independent evidence that the entries represent real and honest transactions and that monies were paid in accordance with those entries.* It is very difficult for a Liquidator to produce the independent evidence required by law to substantiate entries in the books of account as the employees of the bank, who have knowledge of the relevant facts, would not be ordinarily available to the Liquidator and even if they are available may be disinclined to assist the Liquidator. They have no further interest in the affairs of the bank and, in fact, as a general rule, they harbour resentment against the banking company as by reason of its liquidation they were suddenly thrown out of employment. The result is that monies owed to the bank may be lost owing to inability on the part of the Liquidator to establish claims against debtors in a Court of law. This difficulty is *particularly* felt by Liquidators in a misfeasance summons where large amounts are claimed from directors and officers of the bank and the success of these claims depends on the proof of the correctness of several entries in the books of the bank. In order to meet this difficulty we think that there should be some provision in the Banking Companies Act by which the entries in the books of account should be treated as correct and as sufficient proof of the transactions to which they relate unless the contrary is proved. At the same time, we think that it is necessary to provide against the contingency of false or incorrect entries being made at the instance of the directors and officers of a bank. In such cases the Official Liquidator should have protection from the general provision that all entries are sacrosanct. Further, any debtor who disputes the correctness of any of the entries in the books of the bank should have the right to disprove

*See Woodroffe's Law of Evidence, 9th Edition, p. 378.

the entry or entries in question but unless he does so the entries will be accepted by the Court as proof of the matters or transactions to which they relate. We recommend that there should be a provision in the Banking Companies Act to the following effect, namely:—

"Unless the Court has reason to doubt any particular entry or unless it is proved that any particular entry is incorrect, all entries in the books of account of a banking company in liquidation shall be admitted in evidence in all proceedings by or against a banking company in liquidation and shall be accepted by the Court as proof of the matters, transactions and accounts therein recorded without requiring further proof".*

51. The question may be asked why banking companies in liquidation should be singled out and favoured with a special procedure for the realisation of their debts and why a debtor of a banking company should be deprived of the advantage of the normal civil procedure which gives him plenty of time and a liberal latitude to adopt all possible defences, true or false, to the claim of his creditor with all its attendant delays. The answer is that a banking company, as will be seen from the illustration given in paragraph 39 above, has more debtors to deal with than a trading company with comparable resources. The principle that banking companies should be placed in a position of advantage so as to avoid multiplicity of Courts has been accepted by the framers of the Banking Companies (Amendment) Act XX of 1950. All that is recommended now is that proceedings for recovery of debts will be part of the winding-up proceedings and not distinct and separate sets of proceedings in the same Court. Secondly, debts due to the bank are always supported by documents and entries in its books, to which a certain amount of sanctity is attached by law or usage. There is less room for any oral contracts or parole transactions, which will necessitate the taking of oral evidence. Thirdly, in the proceedings envisaged above the debtor has every opportunity of raising any defence which he could have raised in a suit.

52. The expenses of recovering the dues of the bank is undoubtedly the heaviest item of expenditure in liquidation proceedings. If the procedure set out above is adopted the saving to the bank in law costs alone would be considerable. Our proposals have also this merit that the Liquidator would be enabled to obtain a decree against the majority of the debtors within a short time as most of the claims

*See Section 240 of the Indian Companies Act which provides that "where any company is being wound up, all documentsof the omp any and of the Liquidators, shall, as between the contributories of the company , be *picrma facie* evidence of the truth of all matters purporting to be recorded therein".

of a banking company are undisputed. We anticipate that the reaction of a debtor, when he realises that a speedy method of recovery is available to the Liquidator, will be to settle his debt.

53. The question of an expeditious procedure for execution of orders made under the provisions envisaged above and of decrees against the debtors of a banking company obtained under the existing law has also engaged our attention.

54. So far as execution can be levied by the Court which passes the decree or order there is not much scope for simplifying the procedure. But when an order or a decree has to be sent to some other Court for execution, the procedure is complicated and rightly so by a series of checks and counterchecks. It is submitted that however much such checks and counterchecks may be necessary in the case of private decree holders, they may safely be dispensed with in the case of a Liquidator who is an officer of the High Court. We suggest, therefore, that when the execution is at the instance of a Liquidator of a banking company, the elaborate transmission procedure prescribed by the Civil Procedure Code* be dispensed with and a simple procedure prescribed under which a Liquidator will be enabled:—

(a) immediately after a payment order or a money decree has been made by the winding-up Court, to obtain a certificate signed by the Registrar as indicated in our draft of the proposed Section;

(b) to take and file the certificate in the Court in which the order or decree is to be executed and apply for execution in the usual way;

(c) to grant a certificate of non-satisfaction or partial satisfaction which shall be accepted by the executing Court as correct.

55. In order to further simplify execution proceedings, it has been suggested that the Liquidator may be allowed to avail himself of the machinery in force for the recovery of land revenue. Our attention has been drawn to a useful provision in the Bombay Co-operative Societies Act VII of 1925**. Under Section 59† of that Act the Liquidator is given the choice of two alternatives, namely, either to enforce payment in a civil Court in execution proceedings or through the Collector under the procedure prescribed for recovery of arrears of

*Sections 39-40, Civil Procedure Code, Order, 21, Rules 5-6.

**See also Bengal Act XXI of 1940, 3rd Schedule, Article 3.

†Government took objection to the provision on administrative grounds in the course of discussion on this Section in the legislature.

land revenue. We have no doubt that conferment of facilities, as ample as those provided by the above Act, will certainly make realisation easier and proceedings less expensive.

There may, however, be administrative difficulties regarding the extension of this summary procedure to banking companies in liquidation. We recommend that the question of extending similar facilities to banking companies in liquidation should be examined by Government and so much of the benefit of the summary procedure as may reasonably and conveniently be extended to banks in liquidation may be so extended.

56. Some of the witnesses examined by us made a complaint that there is usually considerable delay before the Liquidator makes calls on the contributories of the banking company. Under the existing law calls cannot be made unless the list of contributories is settled by the Court. The settlement of the list is sometimes delayed by reason of the fact that some contributories dispute their liability and take proceedings in the Court for the rectification of the share register of the company and for the removal of their names therefrom. Until all these disputes are settled the list of contributories cannot be settled by the Court and no call can be made. Under section 187 of the Indian Companies Act the Court has a discretion "at any time after making a winding-up order and either before or after it has ascertained the sufficiency of the assets of the company to make calls and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves". Once the list is settled the Liquidator may apply to the Court under this Section and the Court may make a call if it is of opinion that the conditions mentioned in the section are satisfied. It may be that under this procedure the settlement of the list may be delayed because some of the contributories may have taken legal proceedings for the determination of their rights. This is inevitable, but the Court always has powers to expedite these proceedings and the delay can be minimised. We do not think that any change in the law is necessary in this matter.

Limitation

57. The Committee has also considered the question as to whether the law of limitation should be further relaxed in favour of the Liquidator. The Liquidator has already been granted a year's grace

by Section 45F of the Banking Companies Act*. Most of the witnesses examined by us were of opinion that the Liquidator's year was inadequate. They urged that in many cases it takes the Liquidator a long time to ascertain who the debtors are and the amounts due from them, particularly where the records are distributed in different parts of India or are incomplete. Under the procedure envisaged above the debtor is liable to be arraigned in the winding-up proceedings and is entitled to claim relief in such proceedings. As regards creditors, it is settled law that "the Limitation Act ceases to run as from the winding-up order so that a creditor whose claim is not then barred will not be barred by subsequent delay".†. We see no reason why limitation should not cease to run against the banking company from the date of the winding-up order. If the procedure envisaged above is adopted, the necessity for the Liquidator to file suits against the debtors of the bank will rarely arise. Further, the Liquidator shall have no scope for unconscionable delay in proceeding against the debtor. He is required to bring the debtor before the Court within 6 months from the date of the winding-up order unless further time is granted by the Court. We, therefore, recommend that provision may be made by the Legislature to the effect that limitation will stop running against a banking company from the date of the winding-up order.

*It has been held that the suspension of limitation does not cover cases in which the claim is already barred by limitation at the date of winding up.—Pioneer Bank Ltd., Vs. Bamandele Banerjee—54 C.W.N.—p. 710.

†See Palmer's Company Precedent, 16th Edition Part II—p. 404.

CHAPTER IV

Enforcement of Liability of Directors and Officers

58. By the terms of our reference we are restricted to the examination of the liability of directors and officers of banking companies which have come to grief. We are, therefore, concerned with the seamy side of banks in the country and any observations contained in this part of the report should not be understood to convey any adverse reflection on the many well-managed banks run by capable and honest directors.

59. The failure of banks for the most part can be ascribed to mismanagement or incompetence on the part of their directors. We find that it is not uncommon that the directorate of most of the banking companies which have gone into liquidation consisted of one or two dominating directors and a number of complaisant directors who, in England, have been aptly called guinea pig directors because they merely said "yes" at Board meetings and departed with the prescribed amount of guineas as fees after having been provided with a lunch. A similar unhealthy practice prevailed in some of the banks in India which have failed, where the dominating directors practically controlled the affairs of the bank and were not subject to any check on the part of their colleagues. The latter were, as often as not, honest public men or prominent men in other walks of life who, owing to their other preoccupations, had no time or aptitude for taking an intelligent interest in the affairs of the bank. The guinea pig directors are the ones whose names attract shareholders and depositors. When the crash comes they plead that the matters, in respect of which mismanagement is alleged, were handled by the dominating directors, to whom large powers were delegated. They have been described as directors who do not direct. Cases are on record in which directors pleaded that they did not know English and could not follow the proceedings at Board meetings*.

* A good suggestion intended to keep directors in touch with the affairs of the company is contained in the following extract from a book entitled "Shareholders' Money" by Horace B. Samuel, at page 142.

"The problem now remains of how to provide machinery by which Directors' duties can be carried out with reasonable efficiency by persons who are necessarily out of touch with the details of the Company's affairs. It is suggested that this problem can be solved, at any rate so far as the annual reports and accounts are concerned, by the following simple method. This is for the Auditors of the Company to send by registered post to the registered address of every single Director, prior to the Board Meeting at which the Directors are to consider and pass their annual report and accounts, a staetement of affairs. This statement of affairs would consist of lists, itemised with reasonable particularity, of the chief

60. It may be said that if the shareholders elect incompetent persons as directors, it is their responsibility and they take the consequences. This is true of most companies. In a banking company, however, it is mainly the depositors' money which is liable to be squandered. The depositors are not parties to the appointment of any of the directors. As observed in the Statement of Objects and Reasons of the Banking Companies Act, "while the primary objective of company law is to safeguard the interests of stockholders, that of Banking Law should be the protection of the interests of depositors". On this principle we feel that when a banking company fails by reason of mismanagement on the part of its directors:—

(a) there should be a day of reckoning between the directors and the depositors;

(b) the liability of the directors of a banking company should be extended;

(c) such liability should be enforced rigorously and expeditiously.

61. We recommend that all persons who have, at the date of the winding-up order, or at any time three years prior thereto, been directors of a banking company should be liable to examination by the Court, unless the Court dispenses with such examination in the case of any of the directors. Before such examination the Liquidator shall investigate the conduct of all such past and present directors regarding their management of the bank and submit a report to the Court. The Court may, after considering the report, dispense with the examination of any such director or directors and fix a date for the examination of the others.

62. This provision is not intended to replace Sections 195 and 196 of the Indian Companies Act, 1913, but the effect of our proposal, if adopted, will be to make resort to Sections 195 and 196 generally unnecessary in the case of directors. Section 195 will still have to be resorted to in the case of persons other than directors. As a matter of practice, Section 196 is seldom invoked on account of the difficulty,

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assets and liabilities of the Company, accompanied by observations by the Auditors as to all cases in which the book values of the assets failed to tally with the values under existing conditions, and also dealing with any assets of an obviously speculative or abnormal character. The statement of affairs would similarly deal with the trading operations of the Company, and its income from investments and other sources, with particular reference, moreover, to the position of the Company's subsidiaries from the point of view of net earnings, and would make a point of separating from the mass of technical profits items of a special and non-recurrent character. The observance of these precautions would tend to render more difficult, if not, indeed, impossible, those cases where the Managing Director of a Company embarks on a policy of unwarranted "flag-flying and window-dressing", and just carries with him the rest of the Board, who are in ignorance of what really lies at the bottom of those reports and accounts to which they are signing their names."

The matter is strictly not within our province but the suggestion merits examination.

amongst others, of substantiating allegations of fraud at that preliminary stage. Directors always resist such allegations and if an adverse order is made they usually appeal against the order and this leads to delay and expense. The result is that Liquidators have to be satisfied with an examination under Section 195*.

63. The examination contemplated is analogous to the public examination of an insolvent under Section 27 of the Presidency Towns Insolvency Act. The examination should be compulsory unless dispensed with by the Court. The deposition recorded on such examination may be used in evidence against the deposing director in all proceedings, civil or criminal, as provided in sub-section (6) of Section 27 of the Presidency Towns Insolvency Act. In this respect the provision we suggest is wider than the corresponding provision in sub-section (7) of Section 196 of the Indian Companies Act, which provides that such evidence can be used only in civil proceedings.

64. By means of this examination the Liquidator would be enabled to ascertain the liability, if any, of each director to the bank. Such examination will have the effect of clearing the ground for a misfeasance summons and, as indicated above should render any examination of such director under Section 195 or 196 unnecessary. If the Court is of opinion, from the examination of any director, or at any time thereafter in the course of the winding up, that such director is incapable or incompetent to perform the duties of such a responsible office, we recommend that the Court should have the power to order that he be prohibited, without the leave of the Court, from being a director of a company or from taking part in the management of a company, whether directly or indirectly, for such period not exceeding five years as may be specified in the order, even if the director is innocent of any act of misfeasance. Reference may be made in this connection to Section 188 of the English Companies Act, 1948**. The

* Palmer's Company Law.—18th Edition—p. 440.

"This public examination was by the Act of 1890 imported from bankruptcy, but the analogy of a director and a bankrupt is not exact. The section (8 in the Act of 1890) was at first largely resorted to, but its operation was considerably curtailed by the decision of the House of Lords in *ex parte* Barnes, (1896) A. C. 146, and of the Court of Appeal in Civil, Naval and Military Outfitters (1899) 1 Ch. 215, holding that no order for public examination of a particular person can be made unless the official receiver expresses the opinion that such person had been guilty of fraud, and shows how he is connected with the fac s. The time for applying to discharge an order for public examination is fourteen days from the service of the order. National Stores (1899) 2 Ch. 773. Few Examinations now take place under this jurisdiction. For all practical purposes of a winding up—as distinguished from the pillorying of delinquent directors before trial—the procedure under section 214 is quite sufficient". (The references in Palmer's are to the Sections of the 1929 Act. In the 1948 Act, Section 268 corresponds to Section 214; Section 270 corresponds to Section 216).

**The effect of the Section is that a person guilty of the offences there set out may be disqualified for a period of up to 5 years from being concerned or taking part in the management of a company, without leave of the Court having jurisdiction to wind up the company. Acting while disqualified renders the offender liable to a heavy penalty. See Magnus and Estrin, Companies Act, 1948, Second Edition, p. 180.

Indian Company Law Committee has recommended the insertion of a similar provision in the contemplated amendment of the Indian Companies Act*. We support the recommendation but the English Section referred to above restricts the powers of the Court to disqualify in the case of fraudulent persons only. We think, that in the case of banking companies in this country, where great lack of vigilance on the part of directors has resulted in heavy loss to the public, an incompetent or incapable director is as much a public danger as a fraudulent one. It is owing to his incompetence or incapacity that delinquent directors are enabled to commit frauds. Further, such a provision will act as a deterrent and make directors of banking companies more alive to their responsibilities. We have, therefore, recommended an extension of the principle contained in Section 188 of the English Companies Act, 1948.

65. The suggestions made above relating to public examination have been confined to directors. The case of auditors has to be specially considered. There can be no doubt that directors would find it difficult to commit acts of misfeasance if the auditors performed their duties with due diligence. A great responsibility rests on them in the case of a banking company. Fraudulent or complaisant auditors are as much a public danger as directors of the same category. We, therefore, suggest that the auditors of a banking company in liquidation should also be compulsorily examined, unless such examination is dispensed with by the Court. As regards the officers of the bank, it would not be a practical proposition to include them in our proposal for a compulsory examination by the Court. Moreover, they are not generally the principal delinquents in cases of fraud and misfeasance but act under the orders of the directors. We think that the existing law relating to public and private examination may continue to apply to officers.

66. The difficulty of establishing a claim against a director or officer under Section 235 of the Indian Companies Act is considerable. These claims arise more often in the case of banking companies than other companies. It is the business of banks to make advances to their constituents, and most of these claims relate to large advances on inadequate security in circumstances which would amount to a breach of duty on the part of the management. When claims are made against directors or officers of a banking company in respect of the loss caused by such advances each director or officer very often, in his defence, throws the blame on one or other of his colleagues. The Liquidator, obviously, has no personal knowledge of the facts relating to the alleged transactions and has to rely on the relevant

* See Report of Company Law Committee—para 94.

records of the bank which may be either missing, misleading or incomplete. Nor, as a rule, can he get any assistance from the ex-employees of the bank as they are discharged from service as soon as the winding-up order is made and are generally not inclined to assist the Liquidator against the directors and officers of the bank. Even when the general liability of directors is established, the Liquidator has great difficulty in establishing the exact extent of the liability of each director. For instance, a bank may lend a large sum of money on a valueless security to a company in which the Managing Director and some other directors of the bank are interested. The transaction may extend over a period during which the personnel of the directors is changed. The burden of the loan may sometimes be shifted to bogus constituents and this may be done particularly at the time of preparation of the balance-sheet in order not to disclose the interests of the directors in the total advances. The minutes of the Board of Directors relating to this transaction may be either non-existent or inadequate. Further, the amount of the loan may fluctuate from time to time during the period of its existence, sometimes owing to the aforesaid manipulations and at other times to normal dealings. In these circumstances it is very difficult for the Liquidator to establish the exact amount payable by each director or officer concerned. The difficulty is aggravated in cases where some of the directors ordinarily reside outside the district where the head office of the bank is situated and attend the meetings of the Board irregularly or when they proceed on leave from time to time. Owing to these and other reasons misfeasance summons often turn out infructuous and result in heavy costs being thrown away and directors who are responsible for the heavy losses caused to the bank escape the full consequences of their acts. We think the burden on the Liquidator in bringing home acts of misfeasance to directors should be lightened. We have given serious consideration to this aspect of the liability of directors and we recommend a change in the procedure to be adopted at the hearing of a misfeasance summons filed under Section 235, Indian Companies Act.

Our recommendation is that when an application under Section 235 is made against any director or officer of a banking company, the burden, in the first instance, shall be on the applicant to establish a *prima facie* case* against such director or officer of liability to the company of the description contemplated by that Section. Such director or officer will then be presumed to be liable to make good to the banking company the loss alleged by the applicant in the misfeasance summons and where the claim in question is

* See Sher Singh Vs. Jitendranath Sen. 36 C. W. N.—p. 16 at page 23 per S. K. Ghosh J. "What is meant by a *prima facie* case? It only means that there is ground for proceedings".

made jointly against more than one director and officer, they will presumably be liable jointly and severally. This presumption will not be irrebuttable but the onus will be on any such director or officer who denies liability, either wholly or in part, to prove his innocence by adopting any of the defences that are open to him in law. The burden on the applicant will be to establish a *prima facie* case of liability against the director or officer without necessarily having to establish the exact amount recoverable. Though we have referred above to directors and officers only, it is intended that the procedure proposed shall apply to all persons against whom an application can be made under Section 235.

Although our recommendation may appear to be a departure from the ordinary rule of procedure, under which the burden of proving any fact lies on the person who asserts it, we think that the amendment proposed is not in any way unconscionable because the material facts are within the special knowledge of the persons against whom the application under Section 235 is directed and it would not be unfair to place on them the burden of proving their innocence once a *prima facie* case is made out. Moreover, as we have pointed out above, in a banking company the money which is lost belongs mainly to the depositors who have no control over the affairs of the bank and the directors of a banking company, unlike any other company, have great opportunities to misapply large funds which are at their disposal.

67. The question of recovery of arrears of call money due, prior to liquidation, from a director was expressly raised in our questionnaire and the unanimous opinion of all the witnesses examined was that a director should in no circumstances be allowed to plead limitation to such a claim. It may happen that a director succeeds in putting off payment of calls with the connivance of his fellow directors and it will be little short of allowing a director to take advantage of his own fraud if he is allowed to escape by pleading limitation*.

68. The point is a comparatively small one but leads to the larger question as to whether directors should be allowed to plead limitation to any claim by the company. It may be noted that the Indian Limitation Act treats directors with more indulgence than the English Companies Act. It is indisputable that directors stand in a fiduciary relation to the company. But they are not, qua directors, express trustees within the meaning of Section 10 of the Indian

* Limitation would not apply if the call is made by the Court under Section 187 of the Indian Companies Act but a director may plead limitation if the Liquidator seeks to recover call moneys by a suit. See Md. A.A. Fazalbhoy Vs. A.B.C. Bank Ltd., 52 Bombay Law Reporters, p. 559.

Limitation Act.* They are, therefore, entitled to plead limitation against a claim by the company. On the contrary, in England "it was as being trustees that directors were held before the Trustees Act, 1888, disentitled to claim the benefit of the statutes of limitation and it is as trustees that they have since that Act been held entitled to the benefit of the qualified provisions for limitation of actions contained in Section 8 of the Act of 1888, now Section 19 of the Limitation Act, 1939".†.

69. We think that allowing a director, who has borrowed money from the company, to plead limitation is inequitable. The same applies to all contractual liability to the company of its directors. We recommend that no length of time should operate as a bar to a claim by a banking company against a director for calls in arrears, debts or other contractual liability. When the transaction between a director and the company creates an express trust, Section 10 of the Limitation Act will apply with the same result. As regards all other claims of a banking company against its directors, a period of at least 12 years limitation should be fixed.

70. In this connection we have to draw attention to Section 235 of the Indian Companies Act. It has been held that this Section lays down a new period of limitation regarding claims for misfeasance, i.e. 3 years from the date of the first appointment of the Liquidator or of the misapplication, ratainer, misfeasance or breach of trust, as the case may be, whichever is longer.‡ Under this interpretation a claim which has already been barred by the ordinary law of limitation while the company is in existence would be revived on the winding up of the company. On the basis of this assumption the Company Law Committee has recommended that the period of limitation mentioned in the Section should be increased from 3 years to 5 years.§ The opinion has been expressed to us by more than one eminent lawyer that Section 235 does not lay down a new period of limitation for misfeasance claims.‖ According to this opinion all that

* See H. C. Mitra's Indian Limitation Act, 13th Edition, p. 101.

"The directors of a company are not trustees because they are not persons in whom the property of the company may be said to have been vested under this Section".

† See Palmer's Company Law—17th Edition—p. 165.

‡ See Official Liquidator Vs. N. Krishnaswami Iyengar and others (1948) A. I. R. Madras 51.

Benares Bank Vs. Sri Prakasa (1946) A. I. R. All. 269.

§ See Report of the Company Law Committee, p. 162.

‖ See Judah's Company Law—p. 362.

Clark J. who decided the above mentioned case reported in (1948) A. I. R. Madras, p. 51, in an earlier unreported judgement was of the same view.

See Application No. 2786 of 1941 in O. P. No. 158 of 1938—Travancore National and Quilon Bank Ltd. in re.

Section 235 does in this respect is to prescribe a time limit within which an application under the Section may be made and that at the hearing of such application the respondent would be entitled to plead limitation as if such application were a suit. The intention of the legislature in amending Section 235 in 1936 was undoubtedly to impose a new period of limitation. We think that Section 235 should be clarified so as to bring out the intention of the legislature beyond doubt. In any case, we think that if our recommendation regarding the period of limitation for claims of the company against directors is adopted, it should be made clear that it is notwithstanding anything contained in Section 235 of the Indian Companies Act or in any other law for the time being in force.

71. When a company is ordered to be wound up, the general experience of a Liquidator is that persons connected with the company's affairs are unwilling to render assistance to the Liquidator and it is with great difficulty that even the statements under Section 177-A of the Indian Companies Act are procured. We recommend that a provision on the lines of Section 43 of the Presidency Towns Insolvency Act be inserted in the Banking Companies Act to the effect that a director or officer of a banking company in liquidation shall give such assistance as the Official Liquidator may require in the realisation and distribution of the assets of a banking company and if he fails to do so shall be guilty of contempt of Court.

CHAPTER V

APPPOINTMENT OF LIQUIDATORS

72. The practice which prevails in all the States, except Bombay is that a private Liquidator is appointed by the Court as Official Liquidator of any banking company which is ordered to be wound up. In Bombay there is a Court Liquidator who is generally appointed as Official Liquidator of any company which is ordered to be wound up by the Bombay High Court. The main objection to the appointment of private Liquidators put forward by most of the witnesses was that large amounts from the assets of the Company are paid out as Commission and expenses and, further, that in many cases the liquidation was carried on in a dilatory and inefficient manner. We are in agreement with this view and are of opinion that wherever possible a Court Liquidator should be appointed on the Bombay model.

73. The office of the Court Receiver and Liquidator at Bombay was established as a Government Department under the superintendence of the High Court by a Resolution of the Bombay Government in consultation with the High Court about 22 years ago. Under rules framed by the Bombay High Court the Court Liquidator acting as Official Liquidator of any particular company is empowered to charge commission on the assets realised by him at certain rates. There is a sliding scale commencing with 5 per cent. on the first Rs. 10,000 and ending with 1 per cent. on any amounts above Rs. 1 lakh. The above scale applies to all realisations except rents for which a flat rate of 5 per cent. is chargeable. All the money thus obtained by way of commission is payable to Government and Government pays all the expenses of maintaining the office of the Court Receiver and Liquidator. Under the rules framed by the High Court the above rates of commission are chargeable unless the Judge otherwise orders. That is to say, in any particular case, the Judge may order a higher or a lower rate of commission. This power, however, is very rarely exercised by the Judge. In addition to commission, the Liquidator is authorised to charge to companies under his management a sum which in his discretion he considers sufficient to cover the expenses of his office including his salary, and this he is empowered to do with due regard to the commission already charged and to the value of assets in each matter and the labour and trouble involved in its management. The latter form of charge is known as establishment charge. In the year 1948 the principle was adopted that

the office of the Court Receiver and Liquidator should not be a profit-making concern and in consequence the Bombay High Court amended its rules to its present form the effect of which is that the Liquidator may not charge any establishment charges, unless the commission charged by him is not sufficient to cover the expenses of the office, which are borne by Government. We understand that so far the office has been able to pay its way.

74. In the Bombay High Court there is a practice that the Judge who passes a winding-up order, or any other Judge who may be appointed by the Chief Justice, is put in charge of the liquidation proceedings of that particular company and the Liquidator has to apply to that Judge for any directions he may seek in the course of the liquidation. This practice is commendable, because the same Judge deals with the liquidation of a particular company throughout and is thus able to direct and control the liquidation proceedings effectively. The rule is subject to the exception, that if a misfeasance summons is taken out, some other Judge is appointed by the Chief Justice to dispose of it. The winding-up Judge, however, conducts all private and public examinations of the directors or officers of the company and his sanction is required if any offer for compromise is made in the misfeasance proceedings.

75. The Liquidator in Bombay has access to the winding-up Judge in his Chambers whenever he seeks directions, which he does by means of a report submitted by him. This practice enables the Liquidator to proceed with the liquidation without delay and without incurring unnecessary costs. Further, the members of the staff in the Liquidator's office, who have had many years' experience, are familiar with the details of liquidation procedure and are thereby enabled to render valuable assistance to the Liquidator. The staff includes three assistants, who are gazetted officers, and who perform the same duties as the Liquidator. Government indemnifies the Court Liquidator against any loss which may be caused to any estate as the result of his acts unless the loss is caused by his fraud or wilful default. The Liquidator and his assistants and all members of the staff who may have to handle moneys in the course of their duties are required to give security in various specified amounts.

76. The advantages of having a Court Liquidator may be stated as follows:—

(a) Multiplication of staff is avoided. In Calcutta for example, where there are 34 banks under the control of private Liquidators, each Liquidator has his own staff and the expenses of his office, including rent and salaries, are paid from the assets of the company. In the case of a Court Liquidator there will be one office and one staff paid by Government to deal with all liquidations. Once the office of a Court Liquidator is established the members of the staff will gain experience as time goes on and in course of time the work will become a matter of routine. In Bombay, for example, we found that the members of the Court Liquidator's office were, on the whole, experienced men and were able to cope with the details and the management of several liquidations without difficulty and the machine ran smoothly.

(b) There would be a considerable saving in costs. Private Liquidators are generally paid a flat rate of commission which is in excess of the rate which would normally be charged by a Court Liquidator. In the course of our investigations in Calcutta we received several complaints of large sums being appropriated by private Liquidators in the form of commission and expenses to the detriment of the depositors.

(c) The Court Liquidator being an officer of the High Court has ready access to the winding-up Judge and can get his directions from the Court more speedily and without the necessity of engaging solicitors or counsel.

(d) A private Liquidator has to furnish security before he takes charge and it usually takes six weeks or even more from the date of his appointment before the security arrangements are completed. It is important that the Liquidator should take charge of the assets of the company without any delay, and this the Court Liquidator is enabled to do as he has a competent staff ready for action.

(e) The Court is able more effectively to direct and control the liquidation proceedings.

77. In recommending the appointment of Court Liquidators wherever possible, the Committee realise that it would not be a practical proposition to create a separate establishment in every High Court in India for this purpose. There are many States in which there are very few bank liquidations, or any other company liquidations, and in these States a Court Liquidator would have very little work to do and it may not be possible for Government to recoup the expenses of maintaining the establishment. But it should be practicable in such cases to appoint some officer of the High Court to be the Court Liquidator in addition to his own duties. On the general question as to the advisability of appointing a Court Liquidator in preference to a private liquidator we are in agreement with the recommendations of the Company Law Committee.*

*Vide para 213 of the Report of Company Law Committee.

78. As a matter of urgency and pending examination of the general question, we recommend that a Court Liquidator may be appointed in the States of West Bengal and Travancore-Cochin where a large number of bank liquidations are pending and these liquidations could be more conveniently and effectively dealt with from a centralised establishment.

79. The appointment of the same person as Official Receiver and Court Liquidator is a question of convenience. In Bombay the office of the Court Receiver and Liquidator is adequately staffed and the flood of liquidation work has not been as overwhelming as in Calcutta. In Calcutta, the Official Receiver, who is also the Official Assignee, is the Official Liquidator of 44 banks and about a hundred other companies in liquidation. It appears that his staff is totally inadequate to cope with these multifarious duties. We think that in Calcutta the office of the Official Receiver should be separated from that of the Court Liquidator as the volume of liquidation work requires a special officer with a separate staff. The Court Liquidator to be attached to the Calcutta High Court can commence his duties by taking over all the companies in liquidation at present in the hands of the Official Receiver. We think that there will be sufficient work in the future to justify the appointment of a permanent Court Liquidator in Calcutta.

80. The Committee also realise that it may not be possible to provide for the appointment of Court Liquidators by legislation in relation to banking companies only. These appointments will presumably fall to be made by the State Governments with the cooperation of the High Courts concerned. It may be observed that the expenses of maintaining the offices of the Court Liquidators, including the salaries of the Liquidators and the members of their staff and provision for pensions, gratuities, etc.. which Government servants are ordinarily entitled to, can be recouped, at least in part, from the commission and other charges levied by the Liquidator on the various estates in his charge.

81. If a Court Liquidator is appointed in any State, the question arises whether all the pending liquidations should be transferred to him. The opinion of most of the persons who were interviewed by the Committee was that pending liquidations should not be automatically transferred to the newly appointed Court Liquidator, as this may lead to confusion and the Court Liquidator may find it difficult to commence his work from the point where it was left off by a private Liquidator, particularly if a large number of liquidations is transferred to him. We are in agreement with this view and suggest that it should be left to the discretion of the winding-up Judge to transfer to the Court Liquidator such liquidations as he may think

fit. The reports of the Reserve Bank of India, after inspection of banks in liquidation, recommended in Chapter VII hereof, will, it is hoped, bring to the notice of the Court cases in which there is due causes for removal of the private Liquidator. As a general rule, we recommend that in all cases where a winding-up order is made by a Court to which a Court Liquidator is attached, the latter shall be appointed Official Liquidator unless the Court thinks otherwise.

82. Administrative action may involve negotiation between Government of India and the State Governments which may be protracted and may take a long time before it materialises. We feel, however, that some administrative action should be taken by which the remuneration paid to private Liquidators may be made subject to a ceiling limit. The rate of commission allowed under the Bombay High Court Rules is fair and will serve as a model. As pointed out above, these rates of commission may be increased or decreased, in proper cases, at the discretion of the Judge. This will make the provision elastic and will enable the Court to ensure that too much or too little commission is not paid to the Liquidators. We recommend, therefore, that the Government of India may, by a circular letter, draw the attention of the State Governments, and through them of the High Courts, to the desirability of providing a sliding scale of commission for Liquidators with particular reference to the scale prescribed by the Bombay High Court. This recommendation, if accepted, may be given effect to as early as practicable.

CHAPTER VI

Schemes of Arrangement

83. Schemes of arrangement are generally governed by Sections 153 and 153-A of the Indian Companies Act with a special provision in Section 45 of the Banking Companies Act relating to banking companies. Under the later Section no Court can sanction "a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them unless the compromise or arrangement is certified by the Reserve Bank as not being detrimental to the interests of the depositors of such company".

84. It appears that there is a prevailing belief among depositors that if a bank is taken into liquidation the assets would be frittered away in costs, expenses and the commission of the Liquidator, and the depositors would get little or nothing. The management of the bank, therefore, has little difficulty in persuading the creditors to agree to a scheme by which they are promised some definite payments. A further inducement is offered in the form of preferential payment to small depositors. Under the existing law, once it has sanctioned a scheme, the Court exercises no further control over the working of the scheme unless an application is made by a creditor for winding up or unless the management makes an application for modifying the scheme. In all other cases the management continues to carry on the affairs of the bank under the scheme without any supervision or control by the Court.

85. The legal position is admittedly unsatisfactory. In connection with the schemes of arrangements of some of the Punjab banks, the extent of the jurisdiction of the Court was considered in a Full Bench case of the Punjab High Court.* In the cases under discussion the schemes themselves provided for the decision by the Court of a number of matters arising therefrom. Before the Full Bench decision the Punjab High Court used to dispose of matters arising out of the scheme when jurisdiction to do so was conferred on it by the scheme itself. The Full Bench decided that the High Court has no jurisdiction to decide such matters and once a scheme has been sanctioned under Section 153, if there were no winding-up proceedings pending,

*See Sm. Bhagwanti *Vs.* New Bank of India Ltd., Amritsar—A. I. R. (37) 1950—Full Bench, Punjab, 111 at p. 120.

the Court was functus. In ariving at the decision the Chief Justice observed "although I have not been able, for reasons stated above, to support the practice that has heretofore been followed by this Court, I must say that that practice had the merit of providing a convenient forum for expeditious disposal of all disputes arising under or out of the scheme and saved the companies working under schemes sanctioned by the Court under Section 153 as well as the creditors from long drawn litigations from Court to Court. In my judgment provision should be made in our Companies Act enabling the Court sanctioning a scheme to make orders for enforcing the scheme and all other ancillary, incidental or consequential orders. It will now be for the legislature to consider the desirability of amending Section 153 by introducing a sub-section on the lines of clause (f) of sub-section (1) of Section 153". We find that no recommendation bearing on the subject has been made by the Company Law Committee but we feel that this question is of outstanding importance to banking companies and the observations of His Lordship should be given effect to in regard to banking companies. We recommend, therefore, that a provision be inserted in the Banking Companies Act to the effect, that notwithstanding anything contained in the Indian Companies Act or any other law in force, the Court sanctioning a scheme under Section 153 of the Indian Companies Act in respect of a banking company may, either by order sanctioning the compromise or arrangement, or by any subsequent order make provision for all or any of the following matters:—

> Enforcement of the scheme and general supervision over the conduct thereof and such incidental, consequential and supplemental matters as are necessary in the opinion of the Court to secure that the compromise or arrangement shall be fully and effectively carried out.

We further recommend that the Court should be empowered to make an order for winding up of the banking company at any time after sanctioning a scheme of arrangement if it is satisfied, that the scheme cannot be implemented.* This power will be found useful in the type of cases in which a scheme, after it has been carried out in part, is found unworkable and none of the parties interested is prepared to undertake the trouble or expense of making substantive application for winding up. It is contemplated that the proposed amendments should apply to the banks working under schemes of arrangement which have been sanctioned before the proposed amendments are passed by the legislature.

*This would not preclude the Court from sanctioning any alternative scheme duly brought before it.

86. There is another aspect of schemes of arrangement which has to be considered. It may be possible for the directors to bring about a scheme of arrangement under which some of them would still remain in control and thereby shut out an investigation into their past conduct and escape liability for acts of misfeasance committed by them. In this way they could use the provisions relating to schemes of arrangement as a smoke-screen to conceal their misdeeds. It was emphasised by the Court in the case of Calicut Bank Ltd., *Vs.* Devani Amal and others (A.I.R. 1940, Madras 621) that the Court is not bound to accept a scheme of arrangement merely because the shareholders and creditors of the company have approved of the same. It is the Court's duty to examine the proposals and decide whether they are fair and reasonable taking everything into consideration. In that case the Court refused to sanction a scheme of arrangement and one of the grounds which weighed with the Court in exercising its discretion was that the directors of the Bank and their friends had received large advances from the company, most of which were irrecoverable.* We think that there should be some provision for investigating the affairs of the bank before a scheme is sanctioned by the Court and that if such investigation discloses any grounds for enquiry into the conduct of the directors the scheme should, generally speaking, not be sanctioned.

87. The main reason advanced for failure to carry out a scheme of arrangement wholly is the difficulty of realising the debts due to the bank and the lengthy legal procedure involved in such realisations. It appears that all the promises of payment contained in a scheme of arrangement are based on the expectation of rapid recovery of the debts due to the bank. This, in our opinion, is not a very sound basis for a scheme of arrangement because in most of the cases under review, the assets of the bank were frozen, a large part of the debts due to the bank could not be recovered without legal proceedings, and decretal amounts could not be realised. It would appear from the above facts that schemes of arrangement are very seldom implemented in full and that the promises made to depositors, at the time the scheme is sanctioned, remained unfulfilled.

88. Schemes of arrangement may generally be divided into two categories, namely:—

(i) those in which no fresh business is done by the bank and the only purpose of the scheme is to realise the debts and distribute the realisations among the creditors;

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* See also Sm. Bhagwanti *Vs.* New Bank of India Ltd., Amritsar, A. I. R. (37) 1950, East Punjab Full Banch 111, per S. R. Das C. J. at p. 118.

"Broadly speaking, the Court has to be satisfied that the statutory requirements have been observed and performed, that the scheme is a fair and practicable one, that there has been no suppression of material facts, that the majority has not been oppressed and that there has been nothing in the conduct of the company or its promoters or directors or officers which requires investigation".

(ii) those in which the bank is permitted to accept fresh deposits.

In the latter case the bank usually keeps two separate sets of books, one for the new business and the other pertaining to the old business which is being liquidated. The first kind of scheme of arrangement, referred to above, is a pure process of self-liquidation, and we are of the opinion that schemes of this nature should not be encouraged. If a scheme of arrangement has no other purpose than the liquidation of the bank, we think that this could be done more effectively by a Liquidator, and if our proposals for the settlement of the debts of the banking company in liquidation are adopted, it can be done more expeditiously and cheaply if the bank is ordered to be wound up. Further, it may be pointed out that under Section 44 of the Banking Companies Act, no banking company which holds a licence under Section 22 of the Act may be voluntarily wound up unless, *inter alia*, the Reserve Bank certifies, in writing, that the company is able to pay in full all its debts to its creditors as they accrue. If a scheme has for its object nothing more than the self-liquidation of the bank, it would be possible for a bank to circumvent the provisions of Section 44 of the Banking Companies Act by evolving a scheme of arrangement which is akin to voluntary liquidation. On the other hand, there may be cases where a simple scheme is evolved for the winding up of the affairs of a bank and where recourse to the legal procedure for winding up may not be necessary or advantageous. Compulsory winding up in such cases would serve no useful purpose. In these circumstances we refrain from recommending any legislative amendment on this controversial point.

89. In our opinion the functions of the Reserve Bank of India should be extended in relation to schemes of arrangement. The only function allotted to the Reserve Bank in the present state of the law is as provided under Section 45 of the Banking Companies Act under which the Reserve Bank has to certify that the scheme is not detrimental to the interests of the depositors of the banking company in respect of which the scheme of arrangement has been proposed. We think that this certificate is entirely inadequate for the purpose, for *prima facie*, a scheme of arrangement as it reads on paper is not and cannot be detrimental to the interests of the depositors. The real question is whether the scheme can be worked out as proposed. We are, therefore, of opinion that Section 45 of the Banking Companies Act should be amended. The certificate of the Reserve Bank of India under Section 45 of the Banking Companies Act shall state:—

(a) that the compromise or arrangement is not detrimental to the interests of the depositors, and

(b) that the compromise or arrangement is not impracticable.

We understand that before a certificate under Section 45 of the Banking Companies Act is issued by the Reserve Bank of India it generally carries out an inspection of the books of the bank to enable it to decide whether the necessary certificate should issue. In our opinion, the inspection of the Reserve Bank at this stage should be more extensive and should include an investigation for the purpose of discovering whether, *prima facie*, there are any grounds for enquiry into the conduct of the directors of the bank and any other matters which may assist the Court when considering the application for sanction of the scheme of arrangement. If the Reserve Bank gives the necessary certificate it shall submit to the Court, as early as practicable, a report giving the result of their investigation. If this procedure is followed the Court would be in possession of more adequate material to enable it to exercise its discretion whether the scheme of arrangement should be sanctioned or rejected. It should be provided in the Act that the Court will exercise such discretion after consideration of the aforesaid report of the Reserve Bank of India.

90. In the above paragraphs we have made our recommendations relating to the law regarding schemes of arrangement in general in respect of banking companies. It will be convenient in the present context to consider if any special provisions are necessary in respect of the banks at present working under schemes of arrangement. As a result of the partition of India in 1947, several banks whose head offices were in those areas of British India, which are now in Pakistan, suspended payment and many of them transferred their activities to India, and were compelled to enter into schemes of arrangement with their creditors, which enabled them to continue their banking business. Some of them have tackled their difficulties with considerable courage and have succeeded to some extent in realising their assets and in getting new business. It will appear from Appendix 'A' that there are 12 banks in Punjab, 13 in Calcutta, 4 in Assam and 1 in Allahabad which are working under schemes of arrangement. Practically none of these banks has been able to implement fully the schemes which were sanctioned by the Court. We have examined the difficulties experienced by these banks. We find that many of these banks have lost, for all practical purposes, a large portion of their assets in Pakistan, and also a considerable number of their debtors remained in Pakistan and the debts due from them are not realisable. They have also found it difficult to realise their assets from debtors in India who are displaced persons protected by the Displaced Persons (Debts Adjustment) Act, 1951.* Further, they

* Under Section 51 of the Displaced Persons (Debts Adjustment) Act, 1951, the protection given by the Act is not extended to the case where a compromise or arrangement is arrived at between a displaced person and a bank working under a scheme of arrangement But if the debtor has not entered into any compromise or arrangement with the bank relating to the repayment, discharge or satisfaction of any debt owing by him to the bank, he would be enabled to seek protection under the Act.

have been compelled to expend large sums of money in costs of litigation. We think that in deserving cases these banks should receive assistance to enable them to recover their assets expeditiously and at a minimum cost. We, therefore, recommend that the Court, which has sanctioned the scheme of arrangement, be given jurisdiction to exercise the following powers in the case of any bank working under a scheme of arrangement at the date of the commencement of the legislation which may be undertaken pursuant to this report and on the application of such bank:—

(a) to excuse any delay in carrying out any of the provisions of the scheme of arrangement on proper grounds being shown and on such terms as the Court thinks fit;

(b) to extend the benefit of the proposed summary procedure for the recovery of debts by filing a list of debtors;

(c) for the purpose of settlement of the list of debtors to exclude any debtor from the benefit of the Displaced Persons (Debts Adjustment) Act, 1951, provided (1) that no final adjudication of the debt has been effected under the Act, and (2) on being satisfied, after hearing the debtor, that it is just and convenient that he should be excluded.*

The provision (c) above has been advisedly included as complaints have been received by us that many persons who are in a position to pay their debts have evaded their liability by seeking shelter under the above Act. The above powers to be given to the Court will be discretionary powers to be exercised by the Court having regard to the circumstances of each particular case. Any order passed by the Court in pursuance of the above powers should be final and binding.

91. There are two matters of detail to which it is necessary to advert before closing this chapter of our report. We recommend that the only Court competent to sanction a scheme of arrangement or an application for a moratorium under Section 37 of the Banking Companies Act in respect of a banking company should be the Court which would have jurisdiction to wind up such banking company. The definition of Court in Sections 45A and 45B of the Banking Companies Act will have to be amended accordingly. In this connection it may be pointed out that under Section 45A of the Banking Companies Act it is provided, *inter alia*, that in Part III and Part III-A the "Court" means the High Court exercising jurisdiction in the place

* Section 5 of the Act provides that a displaced person may make an application under the Act within one year after the date on which the Act comes into force in any local area. The Act has been applied to Delhi, Ajmer, Punjab, U. P. and Bombay from the 10th December, 1951, and in all other States from the 20th December, 1951.

where the registered office of the banking company, *which is being wound up,* is situated. It may be observed in this connection that Section 37 appears in Part III of the Act and an application under this Section is always made by a banking company before any order is made for its winding up. Therefore, the meaning given to the word "Court" in Section 45A cannot be applied to an application under Section 37 of the Act. This anomaly must be removed.

Section 45 of the Banking Companies Act provides that a compromise or arrangement is to be certified by the Reserve Bank as not being detrimental to the interests of the depositors. The Section does not specify that the certificate should be in writing. We have no doubt that the intention was that the certificate should be in writing. The contrary view was urged in a recent case in Calcutta and in order to remove any possible doubt we recommend that the Section be amended so as to make it clear that the certificate of the Reserve Bank should be in writing.

CHAPTER VII

LIAISON BETWEEN THE RESERVE BANK OF INDIA AND BANKING COMPANIES IN LIQUIDATION

92. On this practical question we have had two diametrically opposite views urged before us. One view was that the Reserve Bank of India should cherish the sound banks, nurse the sick banks and bury the dead banks. The other was that whatever may be the position in regard to sound banks and sick banks, the burial should always be under the supervision of the Court and there should be no other controlling authority, for otherwise the Liquidator would be in the embarrassing position of having to serve two masters

93. The exponents of the view that the Reserve Bank of India should have exclusive jurisdiction to liquidate all banks have urged that this is legally possible on the analogy of the provisions relating to the liquidation of co-operative societies. *

94. This view, however, has been strongly controverted, on the ground, *inter alia,* that the analogy of a co-operative society is misleading. Co-operative banks are not strictly commercial banks and the machinery of the Act relating to liquidation of such co-operative societies is inadequate for disposal of the many intricate questions of law and fact which frequently arise in the course of liquidation of a banking company and which need to be closely investigated. In the case of a co-operative society the disputes are for the most part between the society and its members or between its members *inter se.* Secondly, in the public interest, directors who have not done their duty should be examined in a court of law and such examination would have a much greater deterrent effect than a similar enquiry conducted by a Corporation like the Reserve Bank of India. Thirdly, the onerous duty of investigating the conduct of the directors and assessing their liability in misfeasance should not be imposed on the Reserve Bank of India. Fourthly, the interest of the Reserve Bank of India may conflict with its duty in cases where the Reserve Bank of India is itself a creditor and claims priority by virtue of sub-section (2) of Section 18 of the Reserve Bank of India Act. Lastly, the work involved in the liquidation of a bank is mainly of a legal nature and outside the

* The liquidation of co-operative societies takes place under the directions of the Registrar. *See* Bengal Act XXI of 1940, Sections 89 to 94, and Bombay Act VII of 1925 Sections 47 to 59-B.

ordinary province of the Reserve Bank of India. The above reasons appear to us to be convincing and in our opinion it is neither desirable nor feasible to confer exclusive jurisdiction on the Reserve Bank of India to liquidate banks.

95. Two other reasons may be mentioned in support of our opinion given above. If the Reserve Bank of India were entrusted with the liquidation of banks it would have to maintain a large and specialized staff for this purpose and, further, pressure of public opinion may be brought to bear on the Reserve Bank of India to postpone its priority or to pay a dividend to depositors, in anticipation of realisations, which may or may not materialise.

96. An alternative suggestion received by us was that the Reserve Bank of India should be authorised to supervise all bank liquidations. This suggestion was strongly objected to by many witnesses on the ground that a Liquidator should not be subjected to the embarrassment of having to serve two masters, namely, the Court appointing him and the Reserve Bank of India. This view, however, is contrary to precedent. In England, the Liquidator does serve two masters, namely, the Board of Trade and the Court.* On this analogy the Company Law Committee have recommended the setting up of a Central Authority which, like the Board of Trade, shall, *inter alia*, supervise winding-up proceedings.†

97. The question, however, is a general one relating to all companies and having regard to the aforesaid recommendations of the Company Law Committee we would not like to anticipate Government's decision on their recommendation and we refrain from making any similar recommendation confined to banking companies alone.

98. Pending the decision of Government on the aforesaid recommendation of the Company Law Committee, we are of opinion that there should be some agency appointed to supervise the many private Liquidators of banking companies. This function should be performed by the Reserve Bank of India under the direction of the Government of India. The provision will be purely transitory and will remain in operation till such time as the aforesaid recommendation has been considered and a decision taken thereon by Government.

99. We recommend that the Reserve Bank of India may be empowered by statute, whenever directed so to do by the Government of India, to inspect any bank which is being liquidated by a

* *See* Section 250 of the English Companies Act, 1948.

† *See* Company Law Committee Report, para 260.

private Liquidator and make a report to the Government of India. If the Government of India is of opinion, after consideration of the report, that there has been any substantial irregularity or breach of duty in the liquidation proceedings it may send a copy of the report to the Liquidator. It shall be the duty of the Liquidator, after receipt of the said copy of the report from the Government of India, to submit the report to the Court, upon which the Court shall place the winding-up matter on the list for consideration of the report and give directions thereon. The Reserve Bank of India may appear in support of the report if it so desires or if the Court so directs. This recommendation of ours is confined to banks which are under the management of private Liquidators. We do not think that it should apply to Court Liquidators. We have not recommended that this inspection should be compulsory but that it should be at the discretion of the Government of India. * The scope and consequences of this inspection are entirely different from an inspection under Section 35 of the Banking Companies Act which, from the practical point of view, can only be used in the case of a running bank.

100. We further recommend that provision should be made in the Act by which the Reserve Bank of India may be empowered, at any time by notice in writing, to require the Official Liquidator of a banking company in liquidation to furnish to the Reserve Bank of India, any information on any matter or matters relating to or connected with the liquidation. It should be further provided that when the Reserve Bank of India makes any requisition the Official Liquidator shall comply with the same within a reasonable time. By this means the Reserve Bank of India will be enabled to keep itself in touch with liquidation proceedings of banking companies and will be able to furnish to Government any information which it may require in this behalf. The information so obtained will also help the Reserve Bank of India and the Government of India to decide whether an inspection of the Bank, as proposed above, is necessary.

In order to supplement the information from the Liquidators we suggest that the Reserve Bank of India may be allowed to inspect the records of the High Court in the matter of any banking company which is being wound up, or connected records, subject to such rules as the High Court may prescribe in that behalf. For

* The Republic of Finland maintains a permanent Inspectorate (paid out of a small levy on all banks) to exercise supervision functions on banks. There is a provision in their law that " if a bank has gone into bankruptcy the Ministry of Finance appoints a representative on the report of the Bank Inspectorate to watch out the conversion of the bankruptcy estate into money. It is the duty of such representative to attend the bankruptcy administrators with the right of taking part in the discussion and of having his opinions recorded in the minutes. The representative is also entitled at all time to check the cash and documents of the bankruptcy estate and to receive other information as to its position ". *See* he Republic of Finland Bank Inspection Laws, 1931, p. 8.

implementing the latter part of our recommendation, no legislation is necessary but our recommendation may be brought to the notice of the High Courts for consideration.

101. Our attention has been drawn to two decisions of the High Courts of Allahabad and Travancore-Cochin respectively.* The effect of these decisions is that a banking company in liquidation does not cease to be a "banking company" within the meaning of the Act. Their Lordships of the Travancore-Cochin High Court observed that if a banking company can escape the operation of the provisions of the Banking Companies Act by cessation of business the Act can easily be rendered nugatory. The result is that many of the provisions of the Banking Companies Act, which on the face of them could only apply to running banks, are applicable to banking companies in liquidation. This, in our opinion, leads to consequences not contemplated by the framers of the Act and to a good deal of confusion. For example, Section 18 of the Banking Companies Act, which provides for the maintenance by a banking company of cash reserve, could not, by any stretch of the imagination, apply to a banking company in liquidation. All the Sections in Part II of the Act appear to be in the same category.

In our opinion there are two ways in which this unsatisfactory legal position could be regularised. The definition of "banking company" given in Section 5(1)(c) of the Banking Companies Act could be amended so as to exclude therefrom banking companies in liquidation. We think that this course would be fraught with difficulties because in Part III and Part III-A of the Banking Companies Act the expression "banking company" is used with reference to a banking company in liquidation. The alternative method is to make provision that certain Sections of the Act would not be applicable to banking companies in liquidation. We recommend that there should be legislative provision that Part II of the Act should not apply to banking companies in liquidation. We are aware that under Section 53 of the Act the Government of India may, on the recommendation of the Reserve Bank of India, exempt any banking company from complying with any or all of the provisions of the Act either generally or for a limited period, but we think that a banking company which has been ordered to be wound up should not be driven to the necessity of having to apply for exemption from provisions which, from their very nature, cannot apply to

* Juala Bank Ltd. *Vs.* Shitla Pershad Singh, A. I. R. 1950, Allahabad, 309.

K. V. S. Vassan Bros. and others *Vs.* Official Liquidator . The Associated Banking Corporation of India Ltd., A. I. R. 1952—Travancore-Cochin, 170.

them. Further, it is doubtful whether under Section 53 the Government can make a general order exempting all banks in liquidation from the provisions of Part II of the Act.

We have been informed that the question of amending the definition of "banking company" is already before the Government for their consideration and it will be convenient if such question is dealt with along with our recommendations.

CHAPTER VIII

MISCELLANEOUS

102. In this chapter it is proposed to deal with several matters not covered by the foregoing chapters of our report.

Court fees and stamp duties

Section 115 of the Presidency Towns Insolvency, Act provides that "every transfer, mortgage, assignment, power of attorney, proxy paper, certificate, affidavit, bond or other proceedings, instrument or writing whatsoever before or under any order of the Court and any copy thereof shall be exempt from the payment of any stamp or other duty whatsoever". It further provides that "no stamp duty or fee shall be chargeable for any application made by the official assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application". Section 339 of the English Companies Act, 1948, also exempts certain documents from stamp duties in the case of a winding up by the Court of a company registered in England or Scotland. It is understood that the fees prescribed by the Companies (Board of Trade) Fees Order, 1929 and 1930 and the Supreme Court Fees Order, 1930, are lower than the fees charged in other divisions of the Court.* We are of the view that exemptions similar to those contained in Section 115 of the Presidency Towns Insolvency Act should be made in respect of transfers etc., in the course of the winding up of a banking company and no stamp duty or fee shall be chargeable for any application, suit or other proceedings by a banking company in liquidation. It is understood that the Government of India is not competent to grant the whole of the relief recommended. We suggest, therefore, that relief may be granted to the extent possible by Central legislation and as to the rest action may be taken by the Government of India to persuade the States to grant such exemption. The stamp duties and *ad valorem* Court fees add considerably to the cost of liquidation.

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* For text of the order see Appendix 4, Palmer's Company Precedents Part II, 16th Edition, p. 1075.

Delay in drawing up winding-up order in the office of the High Court

103. After an order has been made for the winding up of a banking company it is essential that the Official Liquidator should take charge of the assets of the company without delay. In Calcutta, it was pointed out by members of the legal profession that there is considerable delay in drawing up orders made in winding-up proceedings. We were informed that sometimes an interval of several weeks elapses between the making of the order and the completion of it and service thereof on the Liquidator. In our opinion this state of affairs should be remedied. There were no similar complaints in Madras or Bombay. In Bombay, in order to secure expedition, the judge very often directs the issue of a prothonotary's certificate of the order. The certificate sets out, in brief, the operative portion of the order made by the Court and is sealed with the seal of the Court. It enables the Official Liquidator to collect and take charge of the bank balances and other assets of the company without waiting for the formal order to be drawn up and completed. In this connection the attention of the State Government of West Bengal and, through it of the Calcutta High Court, may be drawn to the above practice and also to the Winding-up Rules under the English Companies Act.*

Special Officer to be appointed on suspension of business

104. We are of opinion that there should be some provision in the Banking Companies Act for the preservation of its assets and for ensuring that the books of the bank will not be interfered with in the interval between suspension of business and the appointment of a Liquidator. This interval sometimes extends to many days and might enable the directors or officers of the company either to conceal some of the books or to alter entries in the books. It is usual with a bank, soon after it suspends payment, to make an application for moratorium under Section 37 of the Banking Companies Act. We think, at this stage, a Special Officer should be appointed by the Court to take charge of all the books and the assets of the company and shall be given such other powers as the Court thinks fit. We understand that in actual practice the Court often appoints a Special Officer in these circumstances. Doubts have been expressed regarding the powers of the Court to appoint such Special Officers in the absence of any statutory provision to that effect and we think that these doubts should be set at rest by

* See Rules 38—42 of the Companies (Winding-up) Rules, 1949. See also Halsbury's Laws of England, 1949 Edition, Vol. V, p. 633. The Official Receiver takes possession of the company's assets upon receipt of the notice without awaiting completion of order.

legislation. The functions of a Special Officer should correspond with those of a Curator under Section 119 of the Bank Act of Canada. A similar provision in the Banking Companies Act will have a salutary effect. *

Copy of entries in books of account certified by the Liquidator to be prima facie *evidence*

105. The liquidation proceedings of a banking company are often delayed by reason of the fact that the books of the company are required to be produced in different Courts, in criminal or civil proceedings which may or may not relate to the winding up of the bank. In such cases the Liquidator is bound to produce one or more of the books of the bank in obedience to a summons issued by a Court for the purpose that certain entries may be put in evidence. If the bank was not in liquidation, it could avail itself of the benefit of the Bankers' Books Evidence Act XVIII of 1891. Under Section 4 of the Act a certified copy of any entry in a banker's books could be used as *prima facie* evidence of the existence of such entry and could be admitted "as evidence of the matters, transactions and accounts therein recorded in every case where and to the same extend as the original entry itself is now by law admissible but not further or otherwise". We think that there should be a provision in the Banking Companies Act by which copies of entries in the books of the bank certified by the Liquidator as correct should be admitted as *prima facie* evidence of the existence of such entries in the books of the bank on the analogy of the Bankers' Books Evidence Act. Under Section 2(8) of that Act there is a definition of "certified copy". In similar terms the Liquidator should be empowered to give a certificate, at the foot of any copy which he supplies, to the effect that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank in his possession and the certificate should be dated and signed by the Liquidator with his name and official title. The Liquidator obviously cannot certify that the entry was made in the usual and ordinary course of business and that the book is still in the custody of the bank which is required in the case of a certified copy under the

* See the Bank Act of Canada 24-25 George V, Chapter 24.

(2) The curator shall generally have all powers and shall take all steps and do all things necessary or expedient to protect the rights and interests of the creditors and shareholders of the bank, and to conserve and ensure the proper disposition, according to law, of the assets of the bank ; and, for the purposes of this section, he shall have free and full access to all books, accounts, documents and papers of the bank.

(3) The curator shall continue to supervise the affairs of the bank until he is removed from office, or until the bank resumes business, or until a Liquidator is duly appointed to wind up the business of the bank.

above Act. For this reason we recommend that such certificate should be received as *prima facie* evidence of the existence of such entry in the books of the bank in the possession of the Liquidator.

Countersignature of cheques

106. Cheques drawn by the Liquidator are required to be countersigned by the Registrar of the High Court under Rule 94 of the Calcutta High Court Rules. The Rule provides for the countersignature being exempted by the Court but we are informed that in practice such exemption is not granted. Similar cheques do not require countersignature in Bombay. It has been reported that considerable delay is caused by insistence on such countersignature. We do not think that countersignature should be insisted on in the case where a Court Liquidator acts as the Official Liquidator of a bank. We recommend that, whereas countersignature may be required or dispensed with in the case of private persons acting as Official Liquidators, the cheques of Court Liquidators need not be countersigned. We suggest that Government may bring this recommendation to the notice of the High Courts for their consideration.

Provision for funds where a banking company in liquidation has no assets

107. There are many cases in which the Official Liquidator cannot proceed with the liquidation for want of funds either at the initial or any subsequent stage. In such cases, the Liquidator should be enabled to proceed against the debtors in order to realise the assets of the bank and also to institute necessary enquiries into the conduct of the directors and officers of the bank. We recommend that, if the Government of India is satisfied that in the public interest the winding up of such a company should be carried on, it should advance funds necessary for the purpose and, whenever possible, make available to the Liquidator the services of the law officer of the Government of India.

Appeals

108. The only provision relating to appeals contained in the Banking Companies Act, 1950, is in Sections 45B(2) and 45B(3). Sub-section (2) provides that there shall be a right of appeal from every order or decision made under Section 45B which, so far as the Court expressing it, conclusively determines the rights of the parties with respect to any matter in controversy. Sub-section (3), in effect, provides that there shall not be any appeal from any other order or decision of the winding-up Court. The consensus of opinion of the witnesses examined by us was that the right of appeal should be cut

down to a minimum. If this is done, it will be an important step in preventing winding-up proceedings from being protracted. Our recommendation is that there should be no right of appeal in any case where the value of the matter in controversy does not exceed Rs. 2,000. This will be a salutary provision and would enable a large number of small claims by or against a banking company to be conclusively determined at an early stage of the winding-up proceedings. It may be observed that normally these claims, in the absence of the Banking Companies Act, would have come under the jurisdiction of a Court of Small Causes, and the right of appeal would have been limited.

D. N. Mitra,
Chairman.

R. Mathalone,
R. C. Deb,
Members.

The 31st December, 1952.

R. K. Desai,
Member-Secy.

CHAIRMAN'S ADDENDUM

I am grateful to the Governor, the Deputy Governors and the staff of the Reserve Bank of India for their helpful suggestions to me personally and to some of the other Members of the Committee. It was not possible, within the time at our disposal, to arrange a meeting of all the Members of the Committee at the final stage. I, therefore, submit an addendum containing my personal views on two matters.

2. The Reserve Bank of India pointed out, as the fact is, that calls on contributories under section 187 of the Indian Companies Act are made at a late stage of the winding-up proceedings. The court has jurisdiction under that section to make calls at any time after a winding-up order and either before or after it has ascertained the sufficiency of the assets of the company, but a call *cannot* be made until a list of contributoriesi s settled.*

3. The settlement of the list of contributories is often held up by reason of objections urged by some of the contributories though such objections have no relation to the claims against other contributories; so that when, at long last, a list of contributories is settled and calls are made, it is found difficult, owing to lapse of time, to trace the whereabouts of quite a number of contributories and the assets of many of the others. The suggestion of the Reserve Bank is that calls may, when circumstances permit and the court thinks fit, be made at an earlier stage. In order to appreciate the point made by the Reserve Bank of India, it will be useful to indicate the various stages through which the list of contributories has to pass before being settled by the court:—

(1) The Official Liquidator with all convenient speed prepares a list of costributories.

(2) He then appoints a time and place for the preliminary settlement of such list.

(3) He gives notice of the time and place appointed for the preliminary settlement of the list.

(4) The parties appearing are heard by the Official Liquidator.

(5) The Official Liquidator completes the preliminary settlement of the list.

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*Gore Brown—Handbook of Joint Stock Companies (40th Edition) p. 723.

" As the power of the liquidator to make calls is on " the contributories for the time being settled on the list of contributories ", it is essential to settle this list before any call is made."

(6) He files the list in court.

(7) The Judge appoints a date for settlement of the list.

(8) The Official Liquidator gives notice of such date to the contributories.

(9) A contributory may apply on the due date for removal of his name from the list or otherwise varying the list. It is very seldom that the order disposing of the objections is made on that date. It is adjourned for furnishing further particulars, for inspection and on other similar grounds.

(10) The list is settled when these objections have been disposed of and before that stage is reached, the court cannot make a call.*

4. In cases where, owing to the complexity of the issues involved or for other sufficient reason, the list cannot be settled at an early date and the number or value of the claims against disputing contributories is inconsiderable, there is no injustice or insurmountable difficulty if, before the list is settled, calls are allowed to be made on the contributories who do not dispute liability. It will be useful to have a statutory provision to the effect that notwithstanding anything to the contrary contained in the Indian Companies Act or in any other law for the time being in force the court may in its discretion for sufficient cause make an order as contemplated by sub-section (1) of section 187 of the Indian Companies Act in respect of every contributory who has been placed on the list by the Official Liquidator and who has not appeared in court to dispute his liability. It is my personal view that paragraph 56 of the Report should be read subject to the above observations.

5. Certain last minute omissions in paragraphs 45 and 46 made at the instance of two of my colleagues in the agreed draft call for comments. The changes have the effect of excluding criminal proceedings from the purview of the recommendations in paragraph 46. Section 11 of the Banking Companies (Amendment) Act of 1950 provides as follows:—

"*Transfer of pending proceedings in winding up to the Court exercising jurisdiction under this Act.*—Where any proceeding for the winding up of a banking company or any other proceeding, whether civil or criminal, which has arisen out of or in the course of such winding up,

*Rule 140 *et seq* of Calcutta High Court Rules. See p. 826 of The Rules of the Calcutta High Court (1914) Fourth Edition.

is pending in any court immediately before the commencement of this Act, it shall stand transferred on such commencement to the Court which would have had jurisdiction to entertain such proceeding if this Act had been in force on the date on which the proceeding commenced, and the Court to which the proceeding stands so transferred shall dispose of the proceeding as if this Act and the amendments made thereby were applicable thereto."

The provision for transfer applies to criminal as well as civil proceedings. My view is that reference to criminal proceedings in section 11 of the Amending Act is deliberate and not, as has been suggested, a draftsman's error which escaped the notice of the legislature and intended to cover a well defined group of criminal cases and not meaningless. Further, on a perusal of the Amending Act, it is clear that the Act intended to bring about a position in which the Liquidator would not have to run from court to court but all proceedings civil or criminal arising out of or in the course of winding up should be in the same court. This intention in regard to criminal proceedings is quite apparent from Section 10 of the Act of 1950. Section 45C of the Banking Companies Act introduced by Section 10 of the Amending Act empowers the winding-up court to take cognizance of and try any offences punishable under the Indian Companies Act alleged to have been committed in the formation or promotion of a banking company which is being wound up or by any past or present director or manager thereof. The offences are divided into two categories: (a) offences which are triable summarily, (b) offences which are not triable summarily. As regards the latter offences, it is provided that the trial should be "by a Judge of the court other than the Judge for the time being dealing with proceedings for the winding up of the banking company". The whole scheme of the Act is to avoid multiplicity of courts in civil as well as criminal proceedings. There is, therefore, no reason why the recommendation for transfer in para. 46 should be restricted to civil proceedings only. I recommend that they may be applied *mutatis mutandis* to criminal proceedings.

6. I would further recommend that the scope of section 45C may be extended so as to include not merely (a) offences punishable under the Indian Companies Act but also (b) offences punishable under the Banking Companies Act or any other law provided the same are alleged to have been committed in the formation or promotion of the banking company or by any past or present director thereof. An objection to the procedure suggested above is that the accused may

have to defend himself in a court, which may be far away from the place where he resides or where the offence was committed and suffer inconvenience in consequence. The answer to this objection is quite simple. The power of the winding-up court to take cognizance of such proceedings is discretionary and the winding-up court can be trusted in using its discretion to have regard to the balance of convenience. On the contrary the advantage of such a procedure is substantial. The accused person will have ready access to all books and papers necessary for his defence and we would avoid the bitter experience of liquidators litigants and lawyers anxious to get on with the liquidation proceedings who discover on the material day that the requisite books and papers are in the police court and the proceedings have to be adjourned till the criminal case is disposed of.

D. N. MITRA.

I agree.

(Illegible).

RESUMÉ OF RECOMMENDATIONS

(Recommendations which require administrative action only are marked with an asterisk to distinguish them from those which require legislative action).

Serial No.	Reference Chapter	Reference Paragraph	Recommendations
1	III	35	Section 43, Banking Companies Act to be amended to clarify that depositors are not obliged to file formal claims in order to rank for dividend.
2	III	35	Depositors or, at any rate, Savings Bank depositors of Rs. 100 or less, should be given priority for the full amount of their claims.
3	III	42	Sections 45A and 45B, Banking Companies Act be amended so as to make it clear that the jurisdiction of the winding-up Court shall extend to all claims of a bank against its debtors whether arising before or after the winding-up order.
4	III	45—46	Proceedings pending at the date of the winding-up order to be automatically stayed till the winding-up Court exercises its discretion to transfer them to itself or not. Definition of 'Court' in Section 45A to be suitably amended.
5	III	47—49	Procedure for settlement of a list of debtors on the analogy of the list of contributories under the Indian Companies Act, with a draft of the proposed section.
6	III	50	Entries in the books of account of a banking company in liquidation to be admitted in evidence in all proceedings by or against a banking company in liquidation and to be accepted by the Court as proof of the matters, transactions and accounts therein recorded unless the Official Liquidator shows that there is reason for doubting any particular entry or unless it is proved that any particular entry is incorrect.
7	III	54	Liquidator to be empowered to file a Registrar's certificate of any payment order or money decree passed by the winding-up Court in the executing Court and to grant a certificate of non-satisfaction or partial satisfaction which shall be accepted by the executing Court as correct.
8	III	55	*Government to consider whether and to what extent facility should be given to the Liquidator to execute decrees under the procedure prescribed for recovery of arrears of land revenue.
9	III	57	Limitation should cease to run against the bank from the date of the winding-up order.
10	IV	61	All persons who were directors at the date of winding-up, or 3 years prior thereto, should be liable to examination by the Court, unless the Court dispenses with such examination in the case of any of them.
11	IV	63	The depositions in such examination may be used in evidence against the deposing directors in all proceedings, civil or criminal.
12	IV	64	Power given to the Court to disqualify any director, for a period extending to 5 years from being a director of any company or, at any rate, of a banking company, if it is found on such examination, or at any time thereafter in the course of the winding-up, that the director is incapable or incompetent to perform the duties of the office of a director.

Serial No.	Reference Chapter	Reference Paragraph	Recommendations
13	IV	65	Auditors of a banking company to be compulsorily examined unless such examination is dispensed with by the Court.
14	IV	66	When an application is made under Section 235, Indian Companies Act, the burden in the first instance shall be on the applicant to establish a *prima facie* case. The respondent will then be liable to make good the alleged loss. The onus will be on the respondent who denies liabiliy, either wholly or in part, to prove his innocence by adopting any of the defences open to him in law.
15	IV	69	There should be no limitation in the case of claims of the banking company arising ex-contractu against directors. In all other claims of the banking company against directors the period of limitation should be 12 years.
16	IV	70	Section 235 of the Indian Companies Act should be clarified so as to bring out the intention of the legislature beyond any doubt. In any case, the period of limitation proposed for a claim of the banking company against a directoi should be stated to be notwithstanding anything contained in Section 235 of the Indian Companies Act or any other law for the time being in force.
17	IV	71	A director or officer of a banking company should be bound to give such assistance as the Official Liquidator in the realisation and distribution of the assets of a banking company requires and if he fails to do so shall be guilty of contempt of Court.
18	V	72	*A Court liquidator should be appointed in all States, wherever possible
19	V	77	*In the case of States where liquidations are few in number some officer of the High Court should be appointed to perform the duties of a Court Liquidator in addition to his other duties.
20	V	78	*As a matter of urgency and pending examination of the general question a Court Liquidator should be appointed in the States of West Bengal and Travancore-Cochin.
21	V	79	*In Calcutta the office of the Official Receiver should be separated from that of the Court Liquidator as the volume of liquidation work requires a special officer with a separate staff.
22	V	81	*If a Court Liquidator is appointed in any State, pending liquidations should not be automatically transferred to him. It should be left to the discretion of the winding-up Court to transfer a pending liquidation at any stage.
23	V	82	*Administrative action at an early stage should be taken to provide that the remuneration payable to private liquidators is subject to a ceiling limit. The rate of commission allowed under the Bombay High Court Rules to serve as a model.
24	VI	85	A court sanctioning a scheme of arrangement under Section 153, Indian Companies Act, in respect of a bank may either at the time of sanction or at any subsequent time make provision for enforcement and general supervision over the conduct of the scheme to ensure that the scheme is effectively carried out.
25	VI	85	The Court should be empowered to order the winding-up of a bank at any time after sanction of a schem• if it is satisfied that the scheme cannot be implemented.

Serial No.	Reference Chapter	Reference Paragraph	Recommendations
26	VI	88	*Schemes of arrangement which do not provide for any fresh business by the bank but the only purpose of which is to realise the debts and distribute the realisations among creditors should not be encouraged.
27	VI	89	The function of the Reserve Bank in relation to schemes of arrangement should be extended. The certificate of the Reserve Bank under Section 45 of the Banking Companies Act shall state that (a) the arrangement is not deterimental to the interests of the depositors ; (b) the arrangement is not impracticable. If the Reserve Bank gives the necessary certificate it shall submit a report to the Court giving to the result of their investigation into the conduct of the directors etc. The Court to exercise its discretion to sanction the scheme after consideration of the report of the Reserve Bank.
28	VI	90	Special provisions for banks at present working under schemes of arrangement. The Court be empowered to excuse delay, to extend the benefit of the proposed summary procedure for recovery of debts by filing a list of debtors and to exclude any debtor from the benefit of the Displaced Persons (Debts Adjustment) Act, 1951, if it is just and convenient to do so.
29	VI	91	The only Court competent to sanction a scheme of arrangement or an application for a moratorium under Section 37 of the Banking Companies Act should be the winding-up Court as defined in Section 45A of the Banking Companies Act. Suitable amendment to be made in definition of Court in Section 45A.
30	VI	91	The certificate of the Reserve Bank under Section 45, Banking Companies Act, shall be in writing.
31	VII	94	*It is neither desirable nor feasible to confer exclusive jurisdiction to liquidate banks on the Reserve Bank of India.
32	VII	98—99	Pending the decision of Government on the recommendation of the Company Law Committee that there should be a Central Authority to supervise winding-up proceedings, the Reserve Bank of India should be empowered, when directed so to do by the Government of India, to inspect any bank which is being liquidated by a private Liquidator. If on such inspection it is found that there has been any substantial irregularity or breach of duty in the liquidation proceedings, the Government of India may send a copy of the report to the Liquidator for consideration by the Court. The above powers of inspection should not apply to banks under the management of a Court Liquidator.
33	VII	100	Reserve Bank of India should be empowered to require the official Liquidator of a bank to furnish any information on any matter relating to the liquidation.
			*In order to supplement the information so received, the Reserve Bank of India may be allowed to inspect the records of the High Court in the matter of any bank in liquidation and this recommendation may be brought to the notice of the High Courts for their consideration.
34	VII	101	Banking Companies Act should be amended so as to exclude a banking company in liquidation from the application of the provisions of Part II of the Act.

Serial No.	Reference		Recommendations
	Chapter	Paragraph	
35	VIII	102	Exemption from Court fees and Stamp duties similar to those contained in Section 115 of the Presidency Towns Insolvency Act should be given to transfers etc., effected in the course of the winding-up of a bank and no stamp duty or fee shall be chargeable for any application, suit or other proceeding. Relief should be given by the Government of India to the extent possible and to the rest action should be taken to persuade the State Governments to grant exemption.
36	VIII	103	*Attention of the Government of West Bengal and through it of the Calcutta High Court may be drawn to the necessity of expediting completion and service of winding-up orders.
37	VIII	104	During the interval between suspension of payment and the appointment of a Liquidator a special officer should be appointed to take charge of the books and assets of the bank and to exercise such powers as the Court thinks fit.
38	VIII	105	Copies of entries in the books of the bank certified by the Liquidator to be received in Court as *prima facie* evidence of the existence of such entries.
39	VIII	106	*Countersignature on cheques to be dispensed with where a Court Liquidator acts as Official Liquidator of a bank.
40	VIII	107	*In cases where a bank has no assets the Government of India should advance funds for defraying the expenses of liquidation if it is satisfied that it is in the public interest that the winding-up of the bank should be carried on and whenever possible it should make available to the Liquidator the services of the law officers of the Government of India.
41	VIII	108	There should be no right of appeal in any case where the value of the matter is controversy does not exceed Rs. 2,000.

APPENDIX A

LIST OF HIGH COURTS IN INDIA

Part 'A' States:

Assam.

Patna.

Bombay.

Madhya Pradesh.

Madras.

Orissa.

Punjab.

Allahabad.

Calcutta.

Part 'B' States:

Hyderabad.

Madhya Bharat.

Mysore.

PEPSU.

Rajasthan.

Saurashtra.

Travancore Cochin.

Part 'C' States:

Ajmer. Bhopal. Bilaspur. Himachal Pradesh. Kutch. Manipur. Tripura. Vindhya Pradesh.	Judicial Commissioners' Courts which have been declared High Courts under the Constitution.

I. SUMMARY OF BANKING COMPANIES WHICH SUSPENDED

PART A STATES

Years	Allahabad		Assam		Bombay		Calcutta		Madras		Nagpur	
	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities
1926 . .	...	...	...	...	...	...	...	...	2	5	...	...
1927 . .	...	...	...	...	...	...	...	...	...	...	...	...
1930 . .	...	...	...	...	...	...	...	...	1	2	...	...
1931 . .	...	...	...	...	...	...	...	...	1	4	...	...
1932 . .	...	...	...	...	...	...	...	...	1	1	...	...
1933 . .	...	...	...	...	...	...	...	...	1	...	...	...
1934 . .	...	...	...	...	...	...	...	...	2	74	...	...
1935 . .	...	...	...	...	...	...	...	...	2	...	...	...
1936 . .	...	...	...	...	...	...	...	...	1	7	...	...
1937 . .	...	...	...	...	...	...	...	...	2	23	...	...
1938 . .	...	...	...	...	...	...	...	...	3	20,17	...	...
1939 . .	1	75	...	...	...	...	...	...	17	22,18	...	...
1940 . .	1	76,00	...	...	...	...	...	...	4	28	...	...
1941 . .	...	...	...	...	...	...	...	...	4	90	...	...
1942 . .	...	...	...	...	...	...	...	...	4	4	...	...
1943 . .	...	...	...	...	...	...	2	1,48	3	3	...	...
1944 . .	...	...	...	...	1	69	1	...	...	...	1	69
1945 . .	...	...	...	...	...	...	2	...	1	1	...	...
1946 . .	...	...	...	...	...	...	2	...	2	2	...	...
1947 . .	...	...	...	...	3	1,85,76	17	2,33,16	3	56,22	...	...
1948 . .	...	...	3	...	1	...	24	7,81,63	2	10	...	...
1949 . .	4	32,94	3	23,54	2	2,52	25	6,95,28	8	27,60	...	...
1950 . .	1	7,76	...	...	3	20,08	8	5,50,61	14	23,99	...	...
1951 . .	1	21	4	1,07,28	3	17,36	9	2,91,51	5	1,04	...	...
1952 . .	...	...	2	2,26	1	3,72	1	3,28	...	...	...	...
TOTAL	8	1,17,66	12	1,33,08	14	2,30,13	91	25,57,25	83	1,53,74	1	69

NOTES.— 1. One banking company under jurisdiction of the Calcutta High Court, 11 under the Travan-
of suspension or winding up order or any other information is not available have not been

2. In the case of some banking companies where the date of suspension of payment was not known

3. Figures relating to High Courts in Part C States, being Ajmer, Bhopal, Bilaspur, Himachal
regarding them was not available.

DIX B

PAYMENT UNDER THE VARIOUS HIGH COURTS MENTIONED BELOW

(000's omitted).

Punjab		PART B STATES: Hyderabad		Mysore		PEPSU		Saurashtra		Travancore-Cochin		Total	
No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities
...	...	...	...	...	...	...	...	...	...	1	7	3	12
...	...	...	...	...	...	...	...	...	...	1	14	1	14
...	...	...	...	...	...	...	...	...	...	1	2	2	4
...	...	...	...	...	...	...	...	...	...	...	...	1	4
...	...	...	...	...	...	...	...	...	...	...	...	1	1
...	...	...	...	...	...	...	...	...	...	2	49	3	49
...	...	...	...	...	...	...	...	...	...	...	...	2	74
...	...	...	...	...	...	...	...	...	...	1	1,95	3	1,95
...	...	...	...	...	...	...	...	...	...	2	4	3	11
...	...	...	...	...	...	...	...	...	...	2	62	4	85
...	...	...	...	...	...	...	...	...	...	5	2,64,43	8	2,84,60
...	...	...	...	...	...	...	...	...	...	20	6,81	38	29,74
...	...	...	...	...	...	...	...	...	...	16	2,37	21	78,65
...	...	...	...	...	...	...	...	...	...	27	4,51	31	5,41
...	...	...	...	...	...	...	...	...	...	8	1,71	12	1,75
...	...	...	...	...	...	...	...	...	...	3	28	8	1,79
...	...	...	...	...	...	...	...	...	...	7	1,09	10	2,47
...	...	...	...	...	...	...	...	...	...	6	3,01	9	3,02
...	...	...	...	...	...	...	...	...	...	...	...	4	2
6	12,12,88	...	...	...	...	...	...	1	5,11	3	53	33	16,93,66
11	48,56,49	...	...	...	...	1	4,04	...	...	...	...	42	56,42,26
5	1,07,38	...	...	1	19	...	...	...	...	...	...	48	8,89,45
1	5,47	1	6,22	1	...	...	...	...	...	4	6,37	33	6,20,50
1	...	...	...	...	...	...	...	...	...	1	8	24	4,17,48
...	...	1	51	...	...	...	...	...	...	2	66	7	10,73
24	61,82,22	2	6,73	2	19	1	4,04	1	5,11	112	2,95,18	351	96,86,02

core Cochin High Court , and one under the Mysore High Court in respect of which the date included in the above statement.

or furnished in accurately or found irrelevant the year of winding up order has been taken.

Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh, have not been shown since information

II. SUMMARY OF BANKING COMPANIES IN LIQUIDATION

Years	Part A States											
	Allahabad		Assam		Bombay		Calcutta		Madras		Nagpur	
	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities
1926	...	...	...	...	...	...	...	...	2	5	...	...
1927	...	...	...	...	...	...	...	...	...	...	...	...
1930	...	...	...	...	...	...	...	...	1	2	...	...
1931	...	...	...	...	...	...	...	...	1	4	...	...
1932	...	...	...	...	...	...	...	...	1	1	...	...
1933	...	...	...	...	...	...	...	...	1	...	...	...
1934	...	...	...	...	...	...	...	...	2	74	...	...
1935	...	...	...	...	...	...	...	...	2	...	...	...
1936	...	...	...	...	...	...	...	...	1	7	...	...
1937	...	...	...	...	...	...	...	...	2	23	...	...
1938	...	...	...	...	...	...	...	...	3	20,17	...	...
1939	1	75	...	...	...	...	...	...	17	22,18	...	...
1940	1	76,00	...	...	...	...	...	...	4	28	...	...
1941	...	...	...	...	...	...	...	...	4	90	...	...
1942	...	...	...	...	...	...	...	...	4	4	...	...
1943	...	...	...	...	...	...	1	1,48	3	3	...	...
1944	...	...	...	...	1	69	1	...	...	...	1	69
1945	...	...	...	...	...	...	2	...	1	1	...	...
1946	...	...	...	...	...	...	1	...	2	2	...	...
1947	...	...	...	...	3	1,85,76	13	2,17,81	3	56,22	...	...
1948	...	...	3	...	1	...	19	3,57,29	2	10	...	...
1949	3	5,90	2	34	2	2.52	25	8,59,34	8	27,60	...	...
1950	1	7,76	...	...	3	20,08	7	4,83,17	14	23,99	...	...
1951	1	21	1	...	3	17,36	8	39,08	5	1,04	...	...
1952	...	...	2	2,26	1	3,72	1	3,58	...	...	...	...
TOTAL	7	90,62	8	2,60	14	2,30,13	78	19,61,75	83	1,53,74	1	69

NOTES.— 1. 11 banking companies under the High Court of Travancore Cochin and one under the Mysore
2. Figures relating to High Courts in Part C States, namely, Ajmer, Bhopal, Bilaspur, Himachal them was not available.

UNDER THE VARIOUS HIGH COURTS MENTIONED BELOW

(000's omitted)

Part B States												Total	
Punjab		Hyderabad		Mysore		PEPSU		Saurashtra		Travancore-Cochin			
No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities	No. of banks	Outside liabilities
...	...	...	...	...	...	...	...	...	...	1	7	3	12
...	...	...	...	...	...	...	...	...	...	1	14	1	14
...	...	...	...	...	...	...	...	...	...	1	2	2	4
...	...	...	...	...	...	...	...	...	...	...	...	1	4
...	...	...	...	...	...	...	...	...	...	...	...	1	1
...	...	...	...	...	...	...	...	...	...	2	49	3	49
...	...	...	...	...	...	...	...	...	...	...	...	2	74
...	...	...	...	...	...	...	...	...	...	1	1,95	3	1,95
...	...	...	...	...	...	...	...	...	...	2	4	3	11
...	...	...	...	...	...	...	...	...	...	2	62	4	85
...	...	...	...	...	...	...	...	...	...	5	2,64,43	8	2,84,60
...	...	...	...	...	...	...	...	...	...	20	6,81	38	29,74
...	...	...	...	...	...	...	...	...	...	16	2,37	21	78,65
...	...	...	...	...	...	...	...	...	...	27	4,51	31	5,41
...	...	...	...	...	...	...	...	...	...	8	1,71	12	1,75
...	...	...	...	...	...	...	...	...	...	3	28	7	1,79
...	...	...	...	...	...	...	...	...	...	7	1,09	10	2,47
...	...	...	...	...	...	...	...	...	...	6	3,01	9	3,02
...	...	...	...	...	...	...	...	...	...	...	...	3	2
2	8,73	...	...	...	...	...	...	1	5,11	3	53	25	4,74,16
6	1,62,25	...	...	...	...	1	4,04	...	...	...	...	32	5,23,68
3	35,55	...	...	1	19	...	...	...	...	...	...	44	9,31,44
1	5,47	1	6,22	1	...	...	...	...	...	4	6,37	32	5,53,06
...	...	...	...	...	...	...	...	...	...	1	8	19	57,77
...	...	1	51	...	...	...	...	...	...	2	66	7	10,73
12	2,12,00	2	6,73	2	19	1	4,04	1	5,11	112	2,95,18	321	29,62,78

High Court, in respect of which information is not available, have not been included in the above statement.
Pradesh,[4] Kutch, Manipur, Tripura and Vindhya Pradesh, have not been shown, since information regarding

III. Summary of Banking Companies working under Schemes of Arrangements under the various High Courts mentioned below :

(000's omitted).

Years	Part A States: Allahabad: No. of banks	Allahabad: Outside liabilities	Assam: No. of banks	Assam: Outside liabilities	Calcutta: No. of banks	Calcutta: Outside liabilities	Punjab: No. of banks	Punjab: Outside liabilities	Total: No. of banks	Total: Outside liabilities
1926	...	...	...	...	...	...	...	...	...	...
1927	...	...	...	...	...	...	...	...	...	...
1930	...	...	...	...	...	...	...	...	...	...
1931	...	...	...	...	...	...	...	...	...	...
1932	...	...	...	...	...	...	...	...	...	...
1933	...	...	...	...	...	...	...	...	...	
1934	...	...	...	...	...	...	...	...	...	...
1935	...	...	...	...	...	...	...	...	...	...
1936	...	...	...	...	...	...	...	...	...	...
1937	...	...	...	...	...	...	...	...	...	...
1938	...	...	...	...	...	...	...	...	...	...
1939	...	...	...	...	...	...	...	...	...	...
1940	...	...	...	...	...	...	...	...	...	...
1941	...	...	...	...	...	...	...	...	...	...
1942	...	...	...	...	...	...	...	...	...	...
1943	...	...	...	...	1	...	...	...	1	...
1944	...	...	...	...	...	...	...	...	...	...
1945	...	...	...	...	...	...	...	...	...	...
1946	...	...	...	...	1	...	...	...	1	...
1947	...	...	...	...	4	15,35	...	...	4	15,35
1948	...	...	...	...	4	1,13,89	8	58,98,19	12	60,12,08
1949	1	27,04	1	23,20	1	1,46,39	3	72,03	6	2,68,66
1950	...	...	...	...	1	67,44	...	...	1	67,44
1951	...	...	3	1,07,28	...	...	1	...	4	1,07,28
1952	...	...	...	...	1	2,52,43	...	...	1	2,52,43
Total	1	27,04	4	1,30,48	13	5,95,50	12	59,70,22	30	67,23,24

Note.—One banking company working under a scheme of arrangement under the Calcutta High Court in respect of which the date of suspension of payment or any other information is not available has not been included in the above statement.

APPENDIX C

Banks' Liquidation Proceedings Committee

Questionnaire

(1) Reference paragraph 1 of the Terms of Reference, regarding the progress of banks in liquidation during recent years. A large number of Banks have gone into liquidation in Calcutta, Bombay and Madras. It has been suggested that the costs of liquidation have been heavy and in some cases exhorbitant.

(a) Have you any suggestions for minimising the cost of winding up proceedings?

(b) What are the particular items of costs which you consider heavy?

(2) In Calcutta and some other parts of India Liquidators are appointed *ad hoc*. In Bombay there is an officer called the Court Liquidator who is normally appointed Official Liquidator of Companies which are wound up by the Court.

Do you think it would be a better system if a Court Liquidator is appointed in each High Court who would be appointed Official Liquidator of all Banking Companies ordered to be wound up? If yes, would you suggest that the existing Liquidators should be discharged by statute and their place taken by the proposed Court Liquidators?

(3) In cases where the winding up proceedings are conducted by a Liquidator other than a Court Liquidator, do you think any useful purpose will be served by providing for supervision of the winding up proceedings by any other authority besides the High Court? If your answer is yes, to what authority other than the Court can the duties of supervision be entrusted and in what manner?

(4) Do you accept the principle that all matters relating to or arising out of the winding up of a Banking Company should be disposed of by the winding up Court as provided by sections 45A and 45B of the Banking Companies Act.

(5) Do you consider that Sections 45A and 45B require clarification and, if so, in what way?

(6) If clarification is considered necessary, would it be sufficient if the statute provides that matters relating to or arising out of the winding up shall include all claims by the Banking Company against any person or persons, including claims which are at the date of the winding up order the subject-matter of a pending suit?

(7) (a) Section 11 of the Banking Companies (Amendment) Act 1950 provides for the transfer to the winding up Court of all proceedings, civil or criminal. Such transfer is limited to proceedings which are pending at the commencement of the Act.

What is your reaction to the insertion of a provision in the Act to the effect that all such proceedings pending on the date of the winding up order should be automatically transferred to the winding up Court?

(b) In your opinion, should such a provision be extended to appeals pending at the date of the winding up order.

(c) What should be done to the proceedings transferred, where the Banking Company ceases to have any interest therein by reason of the realization of its claim in full or otherwise and there are other parties interested in the continuance of the proceedings?

(d) A case may arise in which a claim which arises out of or relates to the winding up is mixed up in the same suit with another claim or claims over which the winding up Court would have no jurisdiction in the ordinary course of law. In such a case would you suggest—

(i) that the suit be not transferred to the winding up Court, or

(ii) that it be left to the discretion of the winding up Court whether the suit should be transferred to itself or not, or

(iii) whether it should be left to the discretion of the winding up Court to deal with the suit only to the extent of the claim that arises out of the winding up and to re-transfer to the proper Court all the other issues involved in the suit?

(8) What is your reaction to a summary procedure being prescribed for settlement of the list of debts due to the Company and the realisation thereof?

Can you suggest any such procedure which will result in expedition and will minimise costs?

(9) Reference Section 45F which gives the Liquidator a year's grace as regards limitation.

Do you think this has worked satisfactorily in practice?

What is your reaction if the statute were to provide that on the making of a winding up order limitation stops running in respect of all claims by the Company?

(10) Have you any suggestions to make regarding the effective and expeditious enforcement of the liabilities of Directors and other officers of the Company?

Do you think any change in the existing law on the subject is necessary? If so, what changes would you suggest? Do you think that there should be statutory provision that all the Directors and other officers of the Banking Company may be joined in one misfeasance summons.

(11) What are your reactions to express statutory provision that an order for examination under section 195 may be made on an *exparte* application by the Official Liquidator on proper grounds being disclosed?

(12) Do you think an extension of Section 196 of the Indian Companies Act to cases, in which the Official Liquidator reports that a Director or other officer of a Company has been guilty of negligence or other breach of duty, short of fraud, will serve a useful purpose in the case of Banking Companies?

(13) Have you any views about the incorporation of a provision corresponding to Section 332 of the U.K. Companies Act in the Banking Companies Act?

(14) Do you consider that a provision should be included in the Banking Companies Act under which (a) the Liquidator should be empowered to realise by summary proceedings unpaid calls made prior to liquidation and that (b) if such calls are due from any Director or other officer of the Company may be so realised even if they are barred by limitation on the date of the winding up order?

(15) Under Section 43 of the Banking Companies Act the question has been raised as to whether the depositors whose claims are shown in the books of the Company as outstanding should be required to file a claim? The Section is not clear as to whether they are bound to make a claim or not.

What is your reaction? Should such depositors file a formal claim and be barred from any distribution if they do not, or should they be *ipso facto* placed on the list of creditors who will rank for dividend?

(16), Reference Sections 38(2), 39 and 45D of the Banking Companies Act.

Do you think that any further statutory relationship should be established between the Reserve Bank of India and Banking Companies in liquidation and the liquidators thereof?

(17) The present position is that once the Court sanctions a scheme of arrangement it ceases to have any effective control over the progress of the scheme.

Do you think a statutory provision should be made conferring on the Court power and jurisdiction to control the progress of the scheme and, if so, the extent and manner of such control?

Do you think that the Reserve Bank should be given any control over the schemes of arrangement with a view to see that it is carried out satisfactorily, and if so, in what manner and to what extent?

(18) (a) Do you think that pending execution proceedings should be included in the expression "claims arising out of or relating to the winding up of a Banking Company" wherever these words appear in the Banking Companies Act?

(b) In the cases where decrees obtained by the Banking Company either before or after the liquidation have to be executed outside the jurisdiction of the High Court, can you suggest any methods by which these execution proceedings can be expedited and the costs thereof minimised?

(19) Have you any suggestions regarding any matter not covered by the questionnaire and within the Terms of Reference?

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