



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

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PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

THE following Bill, which it is intended to introduce into the Council of the Governor of Bombay for the purpose of making Laws and Regulations, is, together with a Statement of Objects and Reasons accompanying it, published for general information :—

A Bill for the Relief of Insolvent Debtors in the Presidency of Bombay, and for amending certain points in the Law of Debtor and Creditor.

WHEREAS it is expedient to make provision for the relief of Insolvent Debtors in the Presidency of Bombay, and to amend certain points in the law of Debtor and Creditor; It is hereby enacted as follows :—

Preamble.

I. In citing this Act in other Legislative Acts, or in any instrument, document, writing or proceeding whatsoever, it shall be sufficient to use the expression "The Bombay Insolvent Act, 186 ." Short Title.

II. This Act shall come into force on the day of 186 . Commencement of Act.

III. The following words and expressions shall throughout this Interpretation. Act have the meaning hereby assigned to them, unless there be something in the subject or context plainly repugnant to such construction.

The term "The Court" shall mean the District Court as defined in Section 386 of the Code of Civil Procedure exercising jurisdiction in Insolvency under this Act. "The Court."

The word "Judge" shall include any Acting Judge of a District Court legally appointed, and any Assistant Judge so appointed and empowered by the Governor in Council to exercise jurisdiction under this Act. "Judge."

The word "Party" shall include an Insolvent and all persons to whom he or his estate is under any liability, or who are under any liability to the Insolvent or his Estate. "Party."

The word "Estate" shall include all claims and credits, and every right, title, and interest held either exclusively or jointly in any pro- "Estate."

perty, whether movable or immovable, present or in expectancy, all powers of disposition, benefits, and emoluments having present pecuniary value, and the sum of all these, in whomsoever legally vested.

"Liability" shall include every existing obligation to pay or satisfy,

"Liability." either at present or at any future time, any debt, demand, costs, damages, fine, forfeiture, penalty, recognizance, security, or any other claim of such a kind as to admit of computation in money and payment or satisfaction of which may be legally enforced.

"Discharge" shall include payment, satisfaction, and every other

"Discharge." legal adjustment, removal or annulment of a liability.

The word "Document" shall include every paper or other substance

"Document." upon which there is any writing, printing, or delineation, and which, or a copy or extract of which, may be legally recorded or filed in a Court of Justice, or issued therefrom.

Words expressed in the singular number or

Number and Gender. in the masculine gender shall be held to include respectively the plural and the feminine.

Words expressive of time shall be construed according to the English

Time. Calendar.

IV. The District Courts of Civil Judicature

District Courts are constituted for the relief of Insolvent Debtors. as defined in Section 386 of the Code of Civil Procedure are hereby constituted Courts for the relief of Insolvent Debtors, and shall have and exercise jurisdiction on that behalf under the superintendence of the High Court of Judicature, subject to the rules and conditions hereinafter provided, and to such further general rules not inconsistent with the provisions of this Act as the said High Court may from time to time prescribe.

V. The Governor in Council shall appoint

The Governor in Council to appoint Assistant Judges, Officers, &c. such Assistant Judges and such Official Assignees and other chief Officers as

may be necessary to carry out the provisions of this Act, and shall assign to such Officers such reasonable salaries as may to him seem fit, and may

And to remove them and to reduce Emoluments. revoke such appointments, and remove or discharge such Officers and alter such salaries at such times and so far as he may deem expedient. The appointment

of such Officers may be delegated to the Judge; Judge may suspend such Officers. who may also for misconduct or negligence suspend such Officers and appoint others to discharge their duties until the orders of the Governor in Council are received.

VI. The appointment and dismissal of Clerks,

Appointment and dismissal of Clerks, Bailiffs, &c. to rest with the Judge. Bailiffs, and other inferior Officers of the Court for the purposes of this Act shall be made by the

Judge, by whom also such Officers may be removed, discharged, or suspended, subject to such rules as the Governor in Council may from time to time prescribe.

VII. All persons authorized to appear for

Persons authorized to appear for parties and to plead or act in the District Court sitting in the exercise of its ordinary Civil jurisdiction, may appear and plead or act in the said Court when sitting in the exercise of the jurisdiction by this Act conferred, subject to the ordinary rules of such Court, and to such conditions as are in this Act prescribed.

Parties and to plead or act in the District Court sitting in the exercise of its ordinary Civil jurisdiction, may appear and plead or act in the said Court when sitting in the exercise of the jurisdiction by this Act conferred, subject to the ordinary rules of such Court, and to such conditions as are in this Act prescribed.

Conditions as are in this Act prescribed.

VIII. All processes and other documents is-

Processes and other documents. suing from or recorded in the Court under this Act shall be subject to

the same rules in respect of seal and signature, and shall be recorded, issued and served in the same way as documents of the same or similar kinds recorded or issued in the exercise of the Court's ordinary jurisdiction, except where it is otherwise provided by this Act.

IX. In the exercise of the jurisdiction by

Power of the Court to procure and take evidence. this Act conferred, the Court, except where it is otherwise provided, shall have the same powers,

and be subject to the same rules, in procuring the attendance of parties and witnesses, taking their examinations, compelling the production

Issue Commissions. of documents and issuing commissions for taking

evidence, or for other purposes, as it may possess, and be subject to in the exercise of its ordinary jurisdiction under the Code of Civil Procedure and other Acts and Regulations at the time in force.

X. The Court shall have power to order

Power of the Court to order Prisoner to be produced. that any prisoner whose presence either as a party or as a witness before the Court or any Officer

thereof may appear necessary, shall be brought and produced before such Court or Officer, and every Jailor or other person in whose custody such prisoner may be, shall be bound to obey such order, and for such obedience the produc-

tion of such order purporting to be under the seal of the Court and the signature of the Judge, shall be sufficient authority.

XI. If the Jail or place in which the prisoner whose presence is

Attendance of a Prisoner confined in a different jurisdiction, how to be procured.

required as aforesaid be not within the local limits of the Court's ordinary jurisdiction, the order for the production of the prisoner shall be forwarded to the District Court or other Principal Civil Court of original jurisdiction, within whose local jurisdiction such Jail or place is situated, accompanied, where the languages in use in the two Courts are different, by a translation in English, signed and sealed like the original, and such order shall, by the Court to which it is forwarded, be endorsed and delivered and forthwith enforced, as if the same or a like order had issued from such Court.

XII. The Court shall have the same

Power of the District Court to punish, for contempt, disobedience, &c.

powers and be subject to the same rules in inflicting punishment for contempt, disobedience of its orders, interruption of its proceedings, obstruction or evasion of its process and the like, as it may possess in the exercise of its ordinary jurisdiction, and every Court in enforcing or executing any order or process of a District Court issued under this Act shall have the like powers to those of the Court, from which such order or process issued.

XIII. No fee, gratuity, or gratification

No fees to be taken except such as shall be authorized.

shall be taken either directly or indirectly, or be knowingly suffered to be taken by any Judge, Officer, or servant of a District Court appointed or serving under this Act, for any service or favour, or for any act or omission, in his official capacity, or for any express or implied promise of the same, except such as shall have been authorized by the Governor in Council, a list of which, signed by the Judge, shall be exposed to view in a public part of the Court or its precincts.

XIV. From and after the time appointed for this Act to take effect,

Insolvent Debtors may petition the Court for relief according to the forms in the Schedule of this Act.

any person who shall have dwelt within the District for the 6 previous Calendar months, and shall be unable to pay his debts, or any person who being in any prison within the said District upon any process whatsoever by reason only of any civil liability shall be in insolvent circumstances, may at any time apply by petition to the District Court

for the benefit of the provisions of this Act, which petition shall be in the form in the Schedule (A) to this Act, or the Schedule (B) to this Act (as the case may require), with such additions and variations as may be necessary to adapt it to the particular case, and such petition shall be subscribed by the petitioner, and shall forthwith be filed in the said Court; and if such persons shall be indebted jointly with another, it shall be lawful for them to apply jointly by petition in such manner as before mentioned, and under such joint petition the joint estate and the separate estates of such petitioners shall be dealt with and distributed.

XV. The party presenting the petition aforesaid shall at the same

time, or within such further time as the Court may prescribe, deliver into the Court a Schedule in the form in the Schedule (C) to this Act annexed, with such additions and variations as may be necessary to adapt it to the particular case, containing a full and true description as to all matters and things required to be set forth therein, so far as the same can be described, and the said Schedule shall be subscribed by such Petitioner, with a declaration that the same is true, and shall forthwith be filed in the said Court.

XVI. Upon the filing of any such petition

the Court shall order that the real and personal estate of the Petitioner to be vested in Official Assignee as Court shall direct.

the Court shall order that all the estate of such Petitioner, whether within the limits of the District or without, except the wearing apparel, bedding and other such necessaries of such Petitioner and his family, and the working tools and implements of such Petitioner and his family, not exceeding in the whole the value of Rupees 300 for each Petitioner with his family, do vest in the Official Assignee for the time being of the said Court, and that all documents in any way relating to such Petitioner's estate, and the effects in his possession or under his control, shall be deposited with such Assignee, and such notice thereof shall be published as the said Court shall direct, and such order, when so made, shall by virtue of this Act relate back to and take effect from the filing of the said petition, and shall instantly vest all the estate aforesaid in the said Official Assignee, who shall hold the same for the purposes and in the manner hereinafter mentioned;

In case after making vesting order petition be dismissed, the same to be null and void, but all acts done by any Assignee, &c. under this Act to be held valid.

Provided that in case, after the making of any such vesting order, the petition of any such Petitioner shall be dismissed by the Court, such vesting order shall from and after such dismissal be null and void: Provided also, that in case

any such vesting order shall become null and void by the dismissal of such petition, all acts done by any Assignee, or other person acting under his authority, according to the provisions of this Act shall be valid, and no suit shall lie in any Court against any such Assignee, or against any person duly acting under his authority, for such acts.

XVII. From and after the time appointed for this Act to take effect, if any person who shall be in prison within the limits of a District in the enforcement of any decree or order of any Civil Court whatsoever for non-payment of money, shall not, within twenty-one days next after such prisoner shall have been so imprisoned, make payment or adjustment according to law to the Creditor at whose suit such prisoner shall have been committed, it shall be lawful for such Creditor to present a petition to the Court of the District within which such person shall have been so imprisoned, in the Form No. 1 in the Schedule (D) to this Act annexed, with such additions or variations as may be necessary, and upon such petition being duly verified, it shall be lawful for the Court to adjudge that such prisoner has committed an act of Insolvency: Provided always, that it shall be lawful for the said Court, upon the petition of any person adjudged to have committed an act of Insolvency as aforesaid, and upon proof of notice to the Creditor upon whose petition such adjudication shall have been made, to revoke or confirm such adjudication.

XVIII. If any person with intent to defeat or delay his Creditors shall depart from within the limits of the jurisdiction of the District Court or from his usual place of business or abode within the said jurisdiction, or make any fraudulent sale or transfer of any part of his estate, or suffer any part of his estate to be taken in execution, attached, transferred, or appropriated, it shall be lawful for any person being a Creditor, or for two or more persons being partners in trade and Creditors to the amount of Rupees five hundred, or for any two Creditors to whom such person shall be indebted to the amount of Rupees seven hundred, or for any three or more Creditors to whom such person shall be indebted to the amount of Rupees one thousand, to present a petition to the District Court within the local jurisdiction of which such person shall have resided at the time of such transaction, which petition may be in the Form No. (2) in the Schedule (D) to this Act annexed with

such additions and variations as may be necessary to adapt it to the particular case; and upon such petition being duly verified, it shall be lawful for the Court to adjudge that such person has committed an act of Insolvency: Provided always, that it shall be lawful for the said Court upon the petition of any person adjudged to have committed an act of Insolvency as aforesaid, and upon proof of notice to the Creditors upon whose petition such adjudication shall have been made, to revoke or confirm such adjudication.

XIX. Every person to whom at the time of the committal of an act of Insolvency as aforesaid, the person committing the same is under a liability to pay money or deliver goods at a certain future time shall be considered a Creditor for the purposes of this Act.

XX. When an adjudication of an act of Insolvency has taken place upon the petition of a Creditor, the Court shall make the like vesting order which shall have the like effect as is described in Section XVI. of this Act, and when such an adjudication is revoked, the vesting order shall become null and void in like manner and subject to the like conditions, as upon the dismissal of the petition, as provided in the Section aforesaid.

XXI. Upon the adjudication of an act of Insolvency, the Court shall direct the Insolvent to file within a time to be named by the Court, a Schedule in the Form in Schedule (C) to this Act annexed, and the Court shall be at liberty to proceed thereupon in like manner as in the case of an Insolvent who has presented a petition for relief under this Act.

XXII. In any case where a petition shall have been presented by an Insolvent Debtor or an act of Insolvency shall have been adjudged to have been committed, it shall be lawful for the Court after the filing of the Schedule required by this Act, if under the circumstances it shall appear proper, to make an interim order for the protection of the Insolvent from arrest, and any such interim order may apply either to all the liabilities mentioned in the said Schedule, or to any of them as the Court may think proper, and may take effect at such time as the Court shall direct, and the order may be recalled and may be renewed as to the Court may appear

proper; and such order shall protect the person to whom it is given from being arrested or detained in prison for any liability to which such order shall apply within the limits of the said District; and any person arrested or detained contrary to such order shall be entitled to his discharge out of custody upon application to the Court whence the process issued by virtue of which such person shall have been arrested or

Such order not to operate as a release, &c., in certain cases.

detained: Provided that no such order shall operate as a discharge of any liability, or prejudice the

rights of any Creditor, in case the order shall be recalled, or shall fall by the petition of the Insolvent being dismissed, or the adjudication being reversed.

XXIII. There shall be appointed one person

Appointment of Official Assignees.

to each District Court of the Presidency of Bombay to be the Official Assignee in all Insolvencies to be prosecuted in the

said Court, and every such Official Assignee shall be, by virtue of his appointment, an Assignee in every such Insolvency of the Insolvent's estate together with any other Assignee, or solely, according as there may or may not be then or afterwards any other Assignee of such estate; the appointment of such other Assignee shall be made by the Court from amongst the Creditors of the Insolvent, and shall be recorded, and such Assignee shall be held to be an Officer of the Court, and subject to its control in like manner as the Official Assignee.

XXIV. Every Official Assignee shall give

Official Assignees to give security and act as directed by the Judge.

such security, and shall be subject to such rules, and shall act in such manner, as the Judge of the

said Court by virtue of any rules and orders of

Insolvent's estates to be received by Official Assignee alone, except when directed by the Court to be otherwise.

the said Court then in force and not inconsistent with the provisions of this Act shall direct, and all the estate of the Insolvent shall in every case be possessed and

received by such Official Assignee alone, save where it shall be expressly otherwise directed by the Court.

XXV. Upon the vacation of his appointment

Upon vacation of appointment Estate to vest without conveyance or assignment in new Assignee.

by the resignation, removal, suspension, or death of an Assignee, all the estates and powers vested in him under this

Act, shall forthwith and from the day the appointment was so vacated vest in the other Assignee, and in such new Assignee as may be appointed according to law; and no suit brought by the former Assignee shall in any such case abate, but may be prosecuted or

defended in the name of the existing Assignee; and all property, documents and evidences belonging or relating to any Insolvent's estate in the hands of an Assignee at the time of his resignation, removal, suspension, or death, shall be forthwith delivered to the remaining Assignee or to such other person as the Court may direct, and the Court shall have power to compel such delivery on the part of a former Assignee, or his representatives, or of any person into whose hands such property, documents or evidences may have come.

XXVI. Every Assignee as aforesaid shall,

Power of Assignees.

with all convenient speed, take possession by him-

self or by other fit and proper persons, of all the estate of the Insolvent of which immediate possession may be obtained, and shall use his best endeavours to obtain possession as speedily as possible of the rest of such estate; and all persons holding property for, or who are under any liability to the Insolvent, shall be bound to transfer such property and to discharge such liability to the Assignee, which transfer and discharge shall be as effectual as if made to the Insolvent.

XXVII. If any Insolvent at the time

Property in the order and disposition of Insolvent to be deemed his property.

of filing his petition, or at the time of the filing of a petition on which an adjudication of Insolvency shall be made, shall by

the consent and permission of the true owner thereof, have in his possession, order, or disposition, any goods or chattels whereof such Insolvent is reputed owner, or whereof he has taken upon him the sale, alteration, or disposition, as owner, the same shall be deemed to be the property of such Insolvent, so as to become vested in the Official Assignee of the Court by the order made in pursuance of this Act.

XXVIII. If any Insolvent who shall file a

Fraudulent conveyances, &c., made by Insolvent within two months before Insolvency to be void.

petition for his discharge under this Act, or who shall be adjudged to have committed an act of Insolvency, shall have voluntarily

transferred any part of his estate for any consideration whatsoever, to any Creditor, or to any other person for the benefit of any Creditor, every such transfer, if made in insolvent circumstances and within two months before the date of the petition of such Insolvent, or of the petition on which an adjudication of Insolvency may have proceeded, or if made with the intention of petitioning the said Court for discharge from custody under this Act, or of committing an act of Insolvency, may be pronounced by the Court to be fraudulent, and thereupon shall be held void as against the Assignees of such Insolvent.

XXIX. If the Insolvent shall hold any office or employment whatsoever in respect of which he shall receive any salary or emolument, or shall be in the receipt of any pension, then it shall be lawful for the Court to order the said Insolvent to pay such proportion of his receipts therefrom to his Assignee as the said Court shall think right, and the Court may order that such proportion shall be withheld from the Insolvent by the person liable to pay the same and paid by such person to the Assignee.

XXX. It shall be lawful for the Assignee with the leave of the Court to take such part of any debts due to the Insolvent as may by composition be gotten in full discharge of such debts, and to submit to arbitration any dispute between the Assignee and any other person on account of any thing relating to the estate of such Insolvent.

XXXI. It shall be lawful for the Assignee with the leave of the Court to prosecute or defend any suits in any Court which the Insolvent might have prosecuted or defended, and to defray the costs of such suits out of the proceeds of the Insolvent's estate; and if there be any Partner of the Insolvent who has not joined in the petition, it shall be lawful for the Court to authorize the Assignee to join such Partner with himself as Plaintiff in such suit, and if such Partner shall execute any release of the debt or demand for which such suit is brought, the release shall be void; Provided always that such Partner, if after notice from the Assignee he shall take no personal part in the prosecution or defence of such suit, shall not be entitled to any money or property recovered, or be liable to pay costs in respect of the same; but if he join in the suit as a Plaintiff, it shall be lawful for the Court, upon the application of such Partner, to direct that he may receive so much of the proceeds of such suit as shall appear to be equitable.

XXXII. All powers vested in the Insolvent which he might lawfully execute for his benefit, shall be vested in the Assignee of the estate of such Insolvent, to be executed with the leave of the Court for the benefit of his Creditors. Such Assignee shall, with the leave of the Court, either sell or otherwise dispose of the Insolvent's estate, or retain and manage the same, or any portion thereof, as may be most

for the benefit of the Insolvent and his Creditors; and all acts done to this end by the Assignee shall be as effectual as if done by the Insolvent himself.

XXXIII. The Assignee shall keep accounts of the estate of the Insolvent, and of all property received and all payments made in respect of such estate, which accounts any Creditors shall be at liberty to inspect at all reasonable times; and the Assignee shall be bound to produce and deliver up to the Court all documents in his possession relating to the affairs of the Insolvent when required to do so by the Judge.

XXXIV. If any Assignee shall dishonestly misappropriate or convert to his own use any portion of the estate of an Insolvent, he commits criminal breach of trust as a public servant and is liable to the punishment provided by Section 409 of the Penal Code; and if any Assignee by disobedience of the orders of the Court, or by gross negligence in the disposal or management of any Insolvent's property under his control shall occasion, or shall not to the best of his ability prevent, any loss to the Insolvent or his Creditors, such Assignee shall be charged in his accounts for such loss with interest at such rate as the Court may think fit to order, payment of which may be enforced by the Court by imprisonment of the Assignee in the Civil Jail until the order of the Court be obeyed, or by distress and sale of the offender's property to such amount as may be necessary.

XXXV. After an Insolvent's petition shall have been filed, or an adjudication of an act of Insolvency shall have been pronounced, the Court shall cause notice thereof to be given to any Creditors of the Insolvent at whose suit he may be detained in custody, and to such other Creditors or their agents as the Court shall direct, and notice to the like effect shall be twice, at least, published in the *Government Gazette*; and the Court in such notice shall appoint a day and place for the hearing of the matters of such petition or adjudication, and for hearing any other applications in the matter of the Insolvency.

XXXVI. Upon the day so appointed by the Court, or on any future day to which such hearing may be adjourned, it shall be lawful for the Insolvent,

and for any Creditor of the Insolvent, to be heard, either by himself or by any pleader duly appointed, in support of, or in opposition to the petition of the Insolvent, or on any other application relating to the Insolvent or his estate. •

XXXVII. It shall be lawful for any person to whom any such Insolvent shall be under any liability to make claim at any hearing upon the estate of such Insolvent, and on proof of his claim to receive a dividend thereon rateably with the other Creditors.

XXXVIII. When there has been mutual credit given to the Insolvent, and any other person, the liabilities on the one part may be set against those on the other part so far and upon such terms as the Court shall order.

XXXIX. Whenever it shall appear to the Court, to be probable that a dividend may be beneficially made amongst the Creditors, it shall be lawful for the Court to appoint a day for the purpose of making a dividend, and to cause notice thereof to be given in such manner as it shall direct; and on the day appointed the Assignee shall deliver in, upon oath or solemn affirmation, as the case may be, a true statement in writing of all moneys received by him, and when, and on what account, and how the same have been employed; and the Court shall examine such statement, and compare the receipts with the payments, and shall ascertain what balances, if any, have been from time to time in the hands of such Assignee; and on the said day all parties interested shall be heard, and all objections to the Schedule of the Insolvent, and to the accounts or conduct of the Assignee, and any claims of any Creditors which shall not have been previously determined shall be heard and determined either by such Court immediately, or on a reference to the Examiner or other Officer of the Court; and it shall be lawful for the Court either at that time to declare a dividend, and to direct that the same be paid by the Assignee, or to postpone such declaration of the same until a further hearing, and to make such order as shall be just.

XL. It shall not be lawful for such Court to order any dividend to be made amongst the joint Creditors out of the separate estate until the separate Creditors shall

have been paid in full, nor to order any dividend to be made to the separate Creditors out of the joint estate until all the joint Creditors shall have been paid in full; in which latter case it shall be lawful for such Court to order such dividend to be made among the separate Creditors out of such interest in the joint estate as such Insolvent shall appear to be entitled to.

XLI. Provided always, that unless it shall appear to the satisfaction of such Court that all the property of the Insolvent is situate, and that all the Debtors and Creditors are resident within the limits of the District, then until the expiration of twelve Calendar months from the notice published in the *Government Gazette*, under the provisions of Section XXXV.

Assignee to reserve one-third part undivided for twelve months.

of this Act, the Assignee shall reserve the full amount of one-third part of all the estate of the said Insolvent which shall have been got in, which shall in the meantime be invested or disposed of in such way as such Court shall order, and shall not remain in the hands of such Assignee, and at the expiration of the said term of twelve Calendar months it shall be so distributed amongst the Creditors as to place them all upon an equal footing.

XLII. If any Creditor whose claim shall have been admitted or established shall not make application to receive his share of any dividend, the Assignee shall certify the same to the Court at its first sitting after the making of the dividend, and it shall be lawful for the Court to direct in what manner, and by whom, and upon what conditions, the money so due to such Creditor shall be kept for or paid to him, or to his lawfully constituted Agent.

XLIII. If it shall appear to the Court that any such Insolvent as aforesaid is indebted to any servant or clerk of such Insolvent in respect of wages or salary of such servant or clerk, it shall be lawful for the said Court to order so much as shall be due as aforesaid, not exceeding two months' wages or salary, to be paid in full to such servant or clerk out of the estate of such Insolvent, and such servant or clerk shall be admitted as a Creditor for any balance remaining due to him after such payment.

Court may award wages, &c., to servants or clerks not exceeding two months, with liberty to prove for any sum beyond the same.

XLIV. Upon application to the Court for

Court may, by order, discharge Insolvent from custody, or dismiss, &c. petition, or order to amend Schedule, or adjourn the hearing, &c.

that purpose, it shall be lawful for the Court to declare that the Insolvent is entitled to his personal discharge under this Act, and to order the same accordingly, which order of discharge shall have the effect of protecting his person from arrest in respect of all demands inserted in his Schedule or established in the same Court; and it shall be lawful for the Court to dismiss or give leave to amend the petition aforesaid, or to order the Insolvent to amend his Schedule, or to adjourn the hearing until a future day, or to make a reference to the Examiner or other Officer of the said Court to make inquiry into any matter of account, or into the truth

Court may remand Insolvent to prison, &c., and order an allowance for maintenance.

of the Schedule, and to report thereon to the Court; and it shall also be lawful for the Court to remand the Insolvent to prison, if a prisoner, until a further hearing, or until a further time to be named in such order; provided that the Court may at any time prior to his final discharge, upon reason shown, commit the Insolvent to custody if he shall not be in custody, and cancel or renew any order which may have been given for the purpose of affording interim protection to the Insolvent from arrest, and may direct that the Assignee shall make some reasonable allowance for the maintenance of the Insolvent until final order, the amount of which maintenance shall be fixed by the Court, and shall not exceed Rupees five per week; and the Court by which any order of discharge shall be made shall by such order direct that the Assignee shall give such notice of such order as to the Court shall seem fit and convenient.

XLV. Any person to whom the Insolvent

Discharge to extend to any sums payable by Insolvent at any future time.

at the period of his Insolvency or his Assignees in that capacity shall be under a liability in expectancy, may claim as a Creditor the present value of the same, which value shall be determined by the Court as may seem equitable, and the discharge of the Insolvent by the Court shall extend to all such liabilities, but without prejudice to securities held by any Creditor.

XLVI. If after the filing of any Insolvent's

Suits against the Insolvent pending at the time of Insolvency, and all proceedings therein, may be stayed so far as relate to debts contained in Insolvent's Schedule.

Schedule and before such Insolvent shall obtain discharge, any suit shall be pending or process shall be applied for or issued against the Insolvent or his representatives in respect of any liability admitted in the Schedules

of the Insolvent, or disputed as to amount only, the Court in which such suit shall be pending, or such application made, on proof that such suit or application is in respect of the liability aforesaid, shall stay all proceedings thereon so far as the same relate to the said liability until further order of the said Court, upon such terms as to costs as shall seem equitable. Provided

No prisoner whose estate is vested in Assignee to be discharged as to certain suits, &c., except under this Act.

that no Prisoner whose estate shall by an order under this Act have been vested in the Official Assignee shall after such order, and whilst the same is in force, be discharged out of custody otherwise than under the provisions of this Act as to any suit or process, or concerning any demand with respect to which an order of discharge can, under the provisions of this Act, be made; nor shall such suit or process abate, or be dismissed, or the Plaintiff be in any way subject to pay costs by reason merely of his not having taken any further step in such suit or process, after such vesting order as aforesaid.

XLVII. In case it shall appear to the Court

Penalty on Insolvent fraudulently concealing, destroying or falsifying any document, or giving undue preference, by contracting or discharging liabilities.

that any Insolvent has fraudulently, with the intent to conceal the state of his affairs, or to defeat the objects of this Act, destroyed or otherwise wilfully prevented the production of any document, or kept, or caused to be kept false accounts, or wilfully altered or falsified any document, or that such Insolvent has fraudulently, with intent of diminishing the sum to be divided among his Creditors, or of giving an undue preference to any of the said Creditors, discharged or incurred any liability, or made away with, or concealed any part of his estate, the Court shall have power to adjudge that the Insolvent shall be imprisoned in the Civil or Criminal Jail for a period not exceeding two years, and to declare him entitled to his discharge at the expiration of the term of imprisonment so adjudged.

XLVIII. In case it shall appear to the Court

Insolvents fraudulently, vexatiously, frivolously, or maliciously, contracting certain debts, not entitled to discharge.

that such Insolvent has incurred any of his liabilities fraudulently, or without having any reasonable expectation at the time when they were incurred of meeting the same, or has by means of false pretences obtained the forbearance of any claim by any of his Creditors, or has put any of his Creditors to any unnecessary expense, by any vexatious defence or delay, to any suit against such Insolvent, or that he is indebted in costs incurred in any suit vexatiously brought or defended, or for damages recovered in any action for a malicious injury done to the Plaintiff therein,

or if it shall appear that the Insolvent's whole liabilities so greatly exceed his means of meeting the same during the time when the same were contracted, reference being had to his actual and expected property, as to show gross misconduct in contracting the same, it shall be lawful for the Court to adjudge that such Insolvent shall be discharged forthwith or after a prescribed period not exceeding one year, except as to any liabilities specially mentioned in the order, and as to such liabilities, to adjudge that such Insolvent shall be discharged so soon as he shall have been in custody at the suit of the persons who shall be Creditors for the same respectively, for such periods as along with any period expressly ordered by the Court, shall not exceed two years in the whole.

XLIX. In all cases where it shall have

Where Insolvent is ordered to be discharged after imprisonment, he may still be liable to be arrested and charged in custody at the suit of certain Creditors.

be arrested at the suit of any one or more of his Creditors with respect to whom it shall have been so ordered, at any time until such period shall have arrived, but not afterwards.

L. In all cases wherein an Insolvent shall

Where Insolvent is in imprisonment at the suit of Creditors, the Court may order detaining Creditor to allow him a sum for maintenance.

be imprisoned at the suit of any Creditors, the Court shall order such Creditors to pay such reasonable allowance as the Court may prescribe for the Insolvent's subsistence in the manner provided in Sections 276 and 277 of the Code of Civil Procedure, and in such proportions as shall seem fit, and on the omission of any such Creditor to pay such sums in such manner as he may have been ordered to pay the same, the Court may order the Insolvent to be forthwith discharged from custody at the suit of such Creditor.

LI. In all cases not otherwise expressly

Costs in cases of opposition to discharge.

provided for, of opposition to an Insolvent's discharge being substantiated, it shall be lawful for the Court to adjudge the reasonable costs of such opposition to be paid out of the Insolvent's estate before any dividend is made thereof, and in case it shall appear to the Court that the opposition of any Creditor to any such Insolvent's discharge was vexatious, it shall be lawful for such Court to award such costs to such Insolvent as shall appear to be just and reasonable, to be paid by the Creditor making such opposition, which shall be paid accordingly.

LII. Where any order of discharge shall

Where order has been issued for discharge of Insolvent, the Court may also discharge him as to any arrest or detainers that may be lodged against him in respect of the same.

have been made by the Court, such Court shall issue a warrant to the jailor or person having custody of the Insolvent, ordering the discharge of such Insolvent, from custody, and such order of discharge shall take effect from the day on which it was pronounced as to all liabilities in respect of which it shall have been made, without further specification of particulars than may be necessary to distinguish between the different liabilities as to which such discharge may be intended to take place at separate times. Provided that the warrant of discharge shall specify the order or warrant in execution of which the Insolvent may at the time be in custody.

LIII. Every order for the discharge of any

Every order for discharge, except in cases of appeals, shall be final and conclusive, unless obtained fraudulently.

Insolvent shall be final and conclusive, and shall not be reviewed by the Court, unless such Court shall thereafter see good cause to believe that such order has been fraudulently obtained, in which case it shall be lawful for such Court, upon the application of the Insolvent, or of any Creditor, to order such Insolvent, to be upon due notice given to such persons and in such manner as the said Court shall direct, to attend or to be brought up before the said Court, which shall thereupon rehear the matter and shall, if just cause shall appear, annul the original order and pass such further order as shall seem fit. In such rehearing and further order, the Court shall exercise the same powers and be subject to the same rules as at the original hearing.

LIV. If in any case an order for the discharge of any Insolvent

If order issued erroneously, Court may revoke, annul, suspend, or amend the same, and recommit the prisoner.

shall have issued erroneously, and is not pursuant to the intended order of the Court in that behalf, it shall be lawful for the Court on such error being shown to it, to revoke such order, and to annul, suspend, or amend the same, and to recommit such Insolvent if necessary, to his former custody, when by such erroneous order he shall have been discharged therefrom; and the further order thus passed shall operate as if it were the original order.

LV. It shall be lawful for the Assignee

On request of Assignee, Insolvent may at any time, although discharged, be further examined touching his estate.

from time to time, although an order for the discharge of the Insolvent may have been made, to apply to the Court that such Insolvent may be further examined as to any mat-

ter relating to his estate by such Court, and it shall be lawful for the Court to order the

Penalty on Insolvent refusing to appear.

same, and in case such Insolvent shall neglect or refuse to appear before such Court at such time and place as shall be directed by such order, or shall refuse to be sworn or to make solemn affirmation as the case may be, or to answer to such questions as shall be put to him relating to his said estates, it shall be lawful for such Court to commit such Insolvent to jail, there to remain until he shall submit himself to the order of such Court in that behalf, and shall answer upon oath or otherwise as shall be required to all such lawful questions as shall be put to him in pursuance of the same for the purposes aforesaid.

LVI. Whenever it shall appear that the

Where the estate pays one-third of Insolvent's debts, or where Creditors to that amount consent, Court may grant a conditional order for final discharge of Insolvent, appoint time for hearing, and direct notices to be given.

estate of any Insolvent which has come to the hands of his Assignee has sufficed to discharge one-third of his liabilities in the matter of the said Insolvency, or that a majority in number and value of the Creditors whose claims are admitted by the Schedule, or established by proof, have consented to such application, it shall be lawful for the said Court, at any time after the hearing of his petition, upon the application of the Insolvent by petition, which may be in the form contained in the Schedule (E) to this Act annexed, with such variations as the case may require, to make an order that on a day therein specified, the Insolvent will be discharged unless good cause be shown to the contrary. Notice of the day shall be given as the Court may direct, and shall be published in the *Government Gazette*, and upon the day thus notified the petition and any objections to the same shall be heard, and the Court shall either discharge the Insolvent or make such other order as shall be just. A copy of the order of discharge shall be given to the Insolvent under the signature of the Judge and the seal of the Court, and the production of a copy thus authenticated shall be a sufficient defence in any Court of Civil Judicature against any such claim as aforesaid or any suit founded thereon.

LVII. It shall be lawful for an Insolvent

Court may, upon application of an Insolvent, provided he has filed his Schedule, make a conditional order for his discharge, appoint a time for hearing, and direct notices to be given.

who shall have presented a petition, or as to whom an adjudication that he has committed an act of Insolvency shall have been made under this Act, provided he shall have filed his Schedule, to apply to the Court by petition, which may be in the form contained in the Schedule (F) to this Act annexed, with

such variations as the case may require, and it shall be lawful for the Court, upon such petition, to make such an order and thereafter to take such proceedings, with the like effect as are in the last preceding Section provided.

LVIII. No liability of any person to our

Nothing in this Act to affect debts, penalties, &c., due to the Crown or to any of the Governments of India.

Sovereign Lady the Queen, or her successors, or to the Secretary of State for India, or to any of the Governments of India, nor the recovery or enforcement of the same shall be in any way discharged or affected by any thing done under this Act except as to such portions of the Insolvent's estate as shall have been actually divided amongst his Creditors under this Act.

LIX. The provisions of this Act shall

Special provisions for Insolvent married women.

extend to married women; and the order vesting the estate of any married woman in the Official Assignee shall extend to all her estate as fully as in any other case, save that the same shall not extend to her wearing apparel, bedding, and other necessities, not exceeding in the whole the value of Rupees two hundred: Provided that the discharge of any married woman under the provisions of this Act shall not extend to discharge her husband from any liability.

LX. If any prisoner for debt shall be or

And for Insolvent lunatics.

become of unsound mind, and be therefore incapable of taking the benefit of this Act in such manner as he might have done if of sound mind, the jailor or person in whose custody such prisoner shall be, shall give information thereof to the District Court, which Court may thereupon proceed to inquire as to the state of the prisoner's mind by such means as it shall think fit; and if such Court shall conclude that the prisoner is of unsound mind, it shall be lawful for such Court to order notice to be given to the Creditor at whose suit such debtor is imprisoned, and on the day named in such notice, being not less than one month after its issue, to order the discharge of such prisoner; Provided that all the estate which would vest in the Official Assignee under a vesting order in the case of a petition by such Insolvent if he were of sound mind, shall by virtue of the order for the discharge of such prisoner made under this Section, be vested in the Official Assignee in the manner and for the purposes hereinbefore mentioned.

LXI. The order of the Court vesting the

Penalty for embezzlement, removal, or concealment of effects, books, papers, &c.

Assignee with the estate of an Insolvent shall be taken to be an order within the meaning of Sections 206 and 207 of the Penal

Code, and whoever commits in relation to the Insolvent's estate, with intent to defraud him or his Creditors of any portion of the same, any of the acts set forth in those Sections respectively shall be liable to the punishments therein provided.

LXII. Whenever any person shall have been ordered to pay any fine for any offence whereby an Insolvent's estate has suffered loss or damage, the Court whereby the fine has been ordered may direct that such fine or any portion of the same be paid to the Assignee, to be held and disposed of as a portion of the estate for the benefit of the Creditors.

LXIII. The Insolvent and his Creditors and their authorized Agents shall have access, at all reasonable times, to all documents and proceedings relating to the Insolvency in the custody of an Assignee or of any other Officer of the Court, and copies of the same shall be furnished by such officers upon the oral application of the parties or their authorized Agents upon the same terms as copies furnished in Civil suits. Certified copies shall be authenticated by the signature of the Official Assignee and the seal of the Court.

LXIV. The Official Assignee shall cause notices to be inserted forthwith in the *Government Gazette* of every petition which shall be filed in any Court by any Insolvent for relief under this Act, and of every adjudication of an act of Insolvency, and of every confirmation or revocation thereof, together with the debts of the same respectively, and in the case of an adjudication, the date of the petition on which the same is grounded, and the production of the *Government Gazette* containing any such notice, shall be deemed and taken by all Courts to be sufficient evidence of the filing of the petition and of such adjudication, and of such confirmation or revocation thereof, and of the dates of the said proceedings.

LXV. In all cases where any Insolvent shall not have obtained his discharge under this Act, the Court, if it shall think fit before making an order for discharge, may direct a decree to be passed against such Insolvent in any Civil Court of the district in the name of the Official Assignee, for the amount of such liabilities as shall appear to be due, and in every such case, if at any time upon the

application of an Assignee or of a Creditor, it shall appear to the satisfaction of the Court that such Insolvent is of ability to discharge such liabilities or any part thereof, or that he is dead, leaving assets available for such purpose,

and that under the circumstances the same is reasonable and proper, the Court may order execution to be taken out upon such decree against the property of such Insolvent, whether the same may or may not be by law vested in the Assignee, for such sum of money as under all the circumstances of the case may seem fit, and the Court shall order such sum as may be thus obtained to be distributed rateably amongst the Creditors of such Insolvent, according to the mode hereinbefore directed in the case of a dividend, and such further proceedings may be had upon such decree as the Court may from time to time order until the said debts or demands shall be fully paid and satisfied. Applications to the Court to order the execution of such decree shall be made according to the rules of the Code of Civil Procedure so far as these may be applicable, and shall not be barred by lapse of time; but if any such application appear to be vexatious or oppressive, the Court may dismiss the same with such costs as may appear to be reasonable.

LXVI. When liabilities in respect of which such decree shall have been passed as aforesaid shall have been discharged, such discharge shall be entered and recorded as in the case of a decree passed in an ordinary suit, and the Court may thereafter, by its order, vest any remaining balance of the estate obtained in execution of the decree in the Insolvent or his representative, to whom possession of the same shall then forthwith be given.

LXVII. From and after the commencement of this Act, no person shall be answerable in any Court for the liabilities incurred by a parent, relative or other person deceased, whether such liabilities shall have been incurred before the commencement of this Act or not to a greater amount than the estate bequeathed to him by such person, or taken possession of by him as such person's representative, shall be sufficient to discharge. Provided that nothing in this Act contained shall remove or affect any liability for which any person 21 years old or upwards, may be answerable as a member of an undivided Hindoo family.

LXVIII. From and after the commencement of this Act, every

Branch firms, and the Moonisms, &c. thereof, and their property, liable to debts wheresoever incurred, although the partners are resident beyond the District.

wheresoever situated, and every resident partner so managing or carrying on such branch firm or house of business, and his estate wheresoever situated, shall be answerable for all liabilities, wheresoever incurred by him or by any partner, agent, or servant of the firm, on behalf

of such branch firm or house of business, whether such liabilities shall have been incurred before the commencement of this Act or not, and notwithstanding such branch firm or house of business may have been conducted in the name; or professedly on behalf of partners or others beyond the limits of the District.

LXIX. From and after the commencement of this Act, all such parts of any Acts or Regulations as are inconsistent with this Act, shall be repealed, except so far as the same repeal any part of a former Act or Regulation.

Repeal of all Regulations and Acts inconsistent with this Act.

parts of any Acts or Regulations as are inconsistent with this Act,

shall be repealed, except so far as the same repeal any part of a former Act or Regulation.

SCHEDULE (A).**FORM OF PETITION BY INSOLVENT IN CUSTODY.**

IN THE COURT FOR THE RELIEF OF INSOLVENT DEBTORS.

In the matter of

an Insolvent.

To

THE JUDGE OF THE SAID COURT.

The humble Petition of
late of

SHOWETH :

That on the day of your Petitioner
was committed to the custody of the Jailor of issued against your Petitioner
[by virtue of a Writ of for the
at the suit of the], and that Detainers have since been issued against
sum of him at the suit of
and for sums of and

respectively, and that he is now a prisoner in the Jail under the
Process aforesaid.

That he is desirous of obtaining the benefit of the "Bombay Insolvent
Act of 186 "

Your Petitioner, therefore, humbly prays that, upon compliance with
the provisions of the said Act, he may have the benefit of the same, and that
all necessary directions may be given for that purpose.

And your Petitioner, &c.

Note.—The blanks are to be filled up, and the parts between brackets omitted or varied
according to the facts.

The Petition is to be signed by the Insolvent, and witnessed by the Jailor.

A similar form is to be adopted in the case of a joint Petition.

SCHEDULE (B).**FORM OF PETITION OF INSOLVENT NOT IN CUSTODY.**

IN THE COURT FOR THE RELIEF OF INSOLVENT DEBTORS.

In the matter of

, an Insolvent.

To

THE JUDGE OF THE SAID COURT.

The humble Petition of
of

SHOWETH :

That your Petitioner is in insolvent circumstances.

That he is now residing at within the jurisdiction of the Zillah of

That he is desirous of obtaining the benefit of the "Bombay Insolvent
Act of 186 "

Your Petitioner, therefore, humbly prays that, upon compliance with
the provisions of the said Act, he may have the benefit of the same, and that
all necessary directions may be given for that purpose.

And your Petitioner, &c.

Note.—The Petition to be signed by the Petitioner, and witnessed by his authorized Agent.

SCHEDULE (C).

IN THE COURT FOR THE RELIEF OF INSOLVENT DEBTORS.

*In the matter of**, an Insolvent.*

I, the said _____ do declare that this my Schedule doth contain a full and fair description of me, as to name, trade, profession and abode, and of the debts due or growing due from me, and of all and every person to whom I am indebted, or who to my knowledge and belief claim to be my Creditors, together with the nature and amount of such debts and claims respectively, distinguishing such as are admitted from such as are disputed by me; and also a full, true, and perfect account of all my estate and effects, real and personal, in possession, reversion, remainder, or expectancy, and also of all places and employments of benefit to me, held by me, and also of all pensions and allowances which I have in possession or reversion or which are held by any other person for me or on my behalf, or of or from which I derive or may derive any manner of benefit, and also of all rights and powers which I am, or any other person in trust for me or for my use or benefit are, in any manner whatever possessed of or interested in or entitled unto, or which I, or any other person in trust for me or for my benefit, have any power to dispose of, charge, or exercise, for my benefit or advantage, together with a full, true, and perfect account of all the debts due or growing due to me, or any person in trust for me, or for my benefit or advantage, either solely or jointly with any other person, and the names and places of abode of the several persons from whom such debts are due and growing due, and of witnesses who can prove or other evidence to prove such debts, so far as I can set forth the same; and that this my Schedule doth fully and truly describe the wearing apparel, bedding, and other such necessities and working tools and implements of myself and my family which are excepted by me from the operation of the "Bombay Insolvent Act of 186," together with the value of such excepted articles respectively.

CREDITORS.

No.	Names and Description of Creditors or claimants, and their present or last residence.	Amount.	When Contracted.	Admitted or Disputed.	Nature and consideration of the Debt and Se- curities, if any ; also why disputed, if disputed.
1, &c.					

Where there are cross demands, the party must be entered both as Creditor and Debtor, and "set off" must be written under the amount.

DEBTORS.

No.	Names and Descriptions, and places or abode of Debtors.	Amount.	When Contracted.	Good, Bad, or Doubtful.	Nature and consideration of the Debt, also Securities (if any) for the same.	Witnesses, with their residences, and other evidence by which the debt may be proved.

N.B.—If property has been taken possession of by Common Assignee, it must, nevertheless, be fully entered in the Schedule.

PROPERTY IN POSSESSION.

1 Interests in Land, Houses, Rents, or other real Estate.	Describe the quality of Estate, if less than the absolute proprietary right, as lease for years, lease for lives, &c., local description, names of Tenants, annual rent or value, Statement of incumbrances (if any) thereupon, with description of them, and Debts	Supposed Value.
2 Personal Property.....	Household Furniture Wearing Apparel (not excepted) Jewels, Trinkets, and Ornaments..... Plate, Linen, China, Glass Wines and other Liquors..... Books, Prints, and Pictures..... Horses and other Animals Carriages Farming Stock, Crops, and Implements of Hus- bandry Other crops on cultivation Stock in Trade, Machinery, and Utensils in business, of Ships and shares of Ships, describing the ships by name, and Master, or other sufficient description. Cash, Bills, Hoondces, Notes, Bonds, &c.; any other property not particularly specified	
3 Unpaid Legacies	Describe the Fund, Stock, Company, Security, &c., and state in whose name, and also when and by whom, the last dividend or other payment in respect of the same was received, and shares of Estate	
	Legacies, shares of Intestate Estates, with all parti- culars concerning the same	

PROPERTY IN REVERSION, PLACES, PENSIONS, ALLOWANCES,
RIGHTS AND POWERS.*Contingent as well as vested interests must be entered.*

Real and personal estate and effects in which I have any interest.

1 Interests in Land, Houses, and Rents and other real Estate.	Describe the property as in the division relating to property in possession; add a description of the nature of the interest, and from whom and in what manner it is derived, with names and descriptions of persons now enjoying the same, the value or annual value according to the nature of the property, and in whose name or names the property now stands, or who has the legal interest therein, according to the nature of the property.	Supposed value of my interest if now to be sold.
2 Personal Property		
Places, Pensions, and Allowances in possession or reversion.	Places or employments held by me, with the salaries fees, and emoluments thereof; also all pensions and allowances in possession or reversion held by me, or by any other person or persons for me or on my behalf, or of or from which I derive or may derive any benefit	
Rights and Powers	Rights and Powers which I or any other person or persons in trust for me, or for my use, benefit, or advantage, am or are in any manner possessed of or interested in or entitled unto, or which I or any other person or persons in trust for me or for my benefit have any power to dispose of, charge, or exercise for my benefit or advantage.....	
Excepted Articles	Excepted articles, and the value thereof. Give a full description of the excepted articles and their value	

The Schedule to be signed by the Insolvent, and witnessed by his Attorney.

A similar form must be adopted in the case of a Joint Schedule.

SCHEDULE (D).**FORM OF PETITION FOR ADJUDICATION OF INSOLVENCY.**

FORM No. 1.

IN THE COURT FOR THE RELIEF OF INSOLVENT DEBTORS.*In the matter of* , *an Insolvent.*

To

THE JUDGE OF THE SAID COURT.

The humble petition of

SHOWETH :

That on or about the day of the said [here state the time and place of the commitment of the Prisoner, and the amount of the debt or sum of money for which the Prisoner shall have been so committed].

That your Petitioner is desirous that the said Prisoner should be dealt with according to the provisions of the "Bombay Insolvent Act 186 .."

Your Petitioner, therefore, humbly prays, that the said may be adjudged to have committed an act of Insolvency, pursuant to the provisions of "The Bombay Insolvent Act of 186 ..," and that the proper order may thereupon be made.

And your Petitioner, &c.

FORM No. 2.

IN THE COURT FOR THE RELIEF OF INSOLVENT DEBTORS.*In the matter of* , *an Insolvent*

To

THE JUDGE OF THE SAID COURT.The humble petition of
of**SHOWETH :**

That late of [heretofore and up to
carried on the Trade or Business of
at].

That on or about the day
of the said
[here state shortly the act or acts of Insolvency relied on] whereby, as your
Petitioner is advised and believes, the said is liable to be
adjudged to have committed an act of Insolvency.

That at the time aforesaid the said was and now is
indebted to your Petitioner in the sum of [state for what the
party is indebted, as for goods sold and delivered, &c.]

Your Petitioner, therefore, humbly prays, that the said may be
adjudged to have committed an act of Insolvency pursuant to the provisions of
the "Bombay Insolvent Act of 186 ..," and that the proper order may there-
upon be made.

And your Petitioner, &c.

Note.—The blanks must be filled up, and the parts within brackets varied, or supplied, as
the case may require.

A similar form must be used in the case of a joint Petition.

SCHEDULE (E).**FORM OF PETITION FOR DISCHARGE IN THE NATURE OF A
CERTIFICATE OF AN INSOLVENT, NOT A TRADER.****IN THE COURT FOR THE RELIEF OF INSOLVENT DEBTORS.**To *In the matter of* , *an Insolvent.*

THE JUDGE OF THE SAID COURT.

The humble petition of the said Insolvent.

SHOWETH :That on or about the day of
[the circumstances to be stated shortly.]

That the Estate of your Petitioner has realized one-third of the amount of the debts established in this Court in the matter of the said Insolvency, [or that the major part in number and value of the Creditors of your Petitioner contained in the said Schedule, or who have since established their debts in this Court have consented to the discharge of your Petitioner from all further liability in respect of his aforesaid debts, provided that this Court shall so order,] as appears by the Schedule annexed to this Petition, to which your Petitioner craves leave to refer.

That your Petitioner is desirous of obtaining a discharge in the nature of a Certificate under the provisions of the said Act.

Your Petitioner, therefore, humbly prays, that he may be discharged from all liability in respect of such debts, and that all necessary directions may be given for that purpose.

And your Petitioner, &c.

Note.—The blanks must be filled up, and the parts between brackets varied, as the case may require.

The Schedule to contain a copy of the original Schedule, and of the debts proved since, if any, and the consent of the Creditors must be signed by them, or their Agents specially authorized.

SCHEDULE (F).**FORM OF PETITION FOR DISCHARGE IN THE NATURE OF
A CERTIFICATE OF AN INSOLVENT TRADER.****IN THE COURT FOR THE RELIEF OF INSOLVENT DEBTORS.***In the matter of* , *an
Insolvent Trader.*

To

THE JUDGE OF THE SAID COURT.

The humble petition of the said Insolvent.

SHOWETH :

That your petitioner, prior to his Insolvency, hereinafter mentioned, carried on the Trade or Business of

That on or about the day of your Petitioner petitioned for his discharge, under the "Bombay Insolvent Act of 186 ." [or was adjudged by this Court to have committed an act of Insolvency.]

That on or about the day of your Petitioner duly filed his Schedule in this Court, and that your Petitioner is desirous of obtaining a discharge in the nature of a Certificate under the provisions of the "Bombay Insolvent Act of 186 ," and he, therefore, humbly prays that all necessary directions may be given for that purpose, and that your Petitioner may by the order of this Court for his discharge in the nature of a Certificate, be discharged from all liability in respect of the debts or claims established, or which might by Law be proved, in this Court, in the matter of his Insolvency.

And your Petitioner, &c.

Note.—The Petitioner must annex to this Petition a copy of his Schedule, and include all debts established, though not included, in the Schedule, as originally filed.

The blanks must be filled up, and the parts between brackets varied as the case may require.

STATEMENT OF OBJECTS AND REASONS.

The necessity for some measure for the relief of Insolvent Debtors in the Mofussil has for years been felt by the most experienced Judicial Officers of the Bombay Presidency. So long ago as in 1852 strong opinions on this subject were expressed and the discussion has since been frequently renewed. The great obstacle experienced in giving effect to the general wish for amelioration has arisen from the expected difficulty of adapting the principles of a Bankrupt Law to the circumstances of Indian Society, and the constitution of the Mofussil Courts. This difficulty has by some been considered insurmountable and caused the rejection in 1858 of the proposals made by the Bombay Government for a general Insolvency Act to be passed by the Legislative Council of India. It was considered that while the discredit attached to bankruptcy would operate much less forcibly in India than in England, in preventing the recklessly incurring of debts, an Insolvency Law could hardly be devised which should not afford opportunities for fraud by bankrupts including in their Schedules fictitious claims, the satisfaction of which would exhaust or diminish the funds otherwise distributable amongst the genuine creditors. The existing procedure of the Civil Courts, on the other hand, it was thought, provided in a great measure for the fair distribution of an Insolvent's property amongst those who were entitled to it, and this end would be still more effectually secured by the Code of Civil Procedure.

That Code has since become law and has amongst other beneficial objects provided for a more speedy change and equal distribution of a debtor's assets amongst his creditors. But except in the case of debts under Rs. 100 it affords no permanent relief to the debtor, while every creditor to secure a share in the available property is still obliged to undergo the expense and anxiety of a law-suit. The latter is in itself a serious evil, but the former is an obstruction to the growth of trade and enterprise, which in every civilized country it has been found necessary by some means to remove as a condition essential to the progress of material prosperity.

In this Presidency the great increase in the number of law-suits in some districts concurrently with the introduction of administrative measures calculated to ameliorate the circumstances of the people attracted a few years since the attention of the Judges of the late Sudder Adawlut, and an examination of the cases in the Zillah of Ahmednuggur showed, that the vast majority were suits brought by Soukars against members of the poorer classes for sums originally of small amount, but increased in many instances four or five-fold by the operation of Act XXVIII. of 1855. This Act was held until lately to have abrogated the principle of the Hindoo Law, which had been retained in the Bombay Code, and which confined the amount of interest to the amount of the principal, and for the first time permitted the unlimited accumulation of interest. The hold thus obtained by the creditor over his debtor has been employed in innumerable cases to keep the latter in a state of dependence, in which as the fruits of his industry beyond the means of a mere animal subsistence were absorbed by his creditor, energy and enterprise must be crushed by a feeling of the hopelessness of all effort to relieve himself. Whether taken into Court or not the debtor's position was practically much the same. In either case he was in general allowed to retain possession of a portion of his property, but on condition only of rendering all its profits to his creditor. This however need no longer exist, but there are still many cases which call for relief.

In some cases in which the creditor incurred the debts himself he might possibly be considered liable for the result of his folly or extravagance; but such is not the case with the majority of the agricultural debtors in this country. A Hindoo is liable not only for debts to the amount of the assets he inherits, but is liable for all his father's debts with interest, and his grandfather's without, so that it frequently occurs that a prosperous man is ruined by his inheritance, or if not by that alone, by his passing a bond for the patrimonial debts, which thus become his own.

This state of things though improved by the great and general rise of prices, and the growth of agricultural prosperity within the last few years, still operates, it is found, most mischievously. The debtor who had once suffered an adverse decree can never recover his independence and the free enjoyment of the fruits of his exertions, for even if upon the voluntary concession of one creditor, to whose personal interests such a concession is proximately at least opposed, he is left in comparative freedom,

for even if upon the voluntary concession of one creditor, to whose personal interests such a concession is proximately at least opposed, he is left in comparative freedom, he has no means of extricating himself from the claims of others who may be less considerate.

The remarkable increase of commercial intercourse between different districts of the Presidency and especially between the interior and the coasts which has attended the extension of the railway system, and which is still daily advancing, has so altered the circumstances of the country and trade, as to assimilate them in their main features to those of an European country, consequently measures such as have been found necessary in Europe, in the interests of trade, cannot much longer be dispensed with here.

Amongst the first of these measures is an Insolvent Law, which by distributing an unfortunate bankrupt's effects amongst his creditors, and sending him forth a free man, secures for the future the benefit of his unfettered exertions to himself and to society. That some risk of frauds will be incurred by the introduction of an Insolvency Law, must be conceded, but those incentives to fraud which will at the same time be removed, must, it is hoped, vastly outweigh that risk in importance.

The principles of an Insolvency Law as applicable to this side of India, has been practically solved in the province of Sind, where for some years, a set of simple rules on that subject were worked with marked benefit to the whole community. The insolvency jurisdiction established originally by the Commissioner has ceased to be exercised since doubts arose as to its legality under the recent changes in the constitution of the Courts of this Province, but its restoration has been represented as absolutely necessary. An Insolvency Law must therefore be re-enacted for Sind, and in legislating for that Province, the opportunity should not be lost of introducing a similar measure in other parts of this Presidency, hence the present draft of a general Law applicable equally to all the districts under the Government of Bombay.

In drafting the Bill simplicity of procedure and an effective relief of the honest debtor, have been the objects chiefly aimed at. It appeared probable that the complicated rules which have grown out of the peculiarities of the English Law, and in the administration of which the Insolvency Courts of England command the aid of a highly educated bar, could not be introduced into India without serious hazard of unnecessary expense, delay, and injustice. The alternative course was to leave the Courts a large discretion in applying the principles of the Bill to the circumstances of cases as they arise, the precise complexion of which it would be impossible to determine beforehand. The High Court is invested with power to supplement the provisions of the Bill by such additional rules of practice, as may be suggested by experience, and at a future period these may, if necessary, be embodied in a Legislative Enactment, but for the present it is thought that the details prescribed by the Bill, are as many, and as precise, as can safely be enacted, while they provide efficiently for the chief objects for which they have been devised.

The Bill both in its present form and in a shape more nearly resembling the Act for relief of Insolvent Debtors has been submitted for the opinion and criticism of very able officers. The Bill cannot be considered perfect now, and will even when passed require improvement and further alteration. But if unfortunate debtors are relieved from debts incurred by no misconduct on their parts, and men possessed of capital are encouraged to embark in trade, while the fraudulent and dishonest are deterred from seeking the benefit of the Act, a new era will arise in commercial life on the Western Coast of India.

Those Sections which qualify a rule of the Hindoo Law which has long been felt as unjust and oppressive by the Native community itself, and those Sections which bring the transactions of branch firms under the management of agents within the control of the law, have the same general object in view, as the other provisions of the Bill. They provide only for reconciling the law of this Presidency with almost universally received principles, and therefore no further argument for their introduction appears necessary.

The Bill should be translated into Guzerathi, Murathi, Canarese, and Sindee.

Poona, 13th August 1863.

(Signed) W. E. FRERE.

By order of His Excellency the Governor in Council,

H. M. BIRDWOOD,

Officiating Under-Secretary to Government.