

THE BANKRUPTCY ACT.

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Bankruptcy Act of the Year R.S. 130.

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BY THE KING'S MOST EXCELLENT MAJESTY.

WHEREAS it has been thought expedient for the security of commerce to extend and improve the bankruptcy law of the Country,

It is hereby enacted :

PRELIMINARY.

1. — This law shall be called The BANKRUPTCY ACT R. S. 130.
2. — It shall come into force on November 30th, R. S. 130.
3. — On and from the day of operation of this Act the following Laws and the Regulations issued thereunder shall be repealed :
 - (1) The Debtors Act, R. S. 110.
 - (2) The Bankruptcy Act, R. S. 127.
4. — (1) The Minister of Justice shall appoint such person or persons as he may think fit by name or office to be official receivers of bankrupts' estates and may remove any person so appointed from such office. The official receivers shall be officers of the Court. They are officials within the meaning of the Penal Code.

(2) — The Minister of Justice may from time to time appoint by name or office such other officers, either temporary or permanent, as he may think necessary for carrying into effect the provisions of this Act and may assign to them such duties as he may think fit and may remove any such officer from office.
5. — This Act shall apply to the Monthon of Bangkok only but its provisions may be extended to such other Monthons as shall from time to time be specified by notification issued in the *Government Gazette*.
6. — In this Act, unless the context otherwise requires :

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PRELIMINARY.

“**Ordinary resolution**” means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution ;

“**Special resolution**” means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution ;

“**Petitioning Creditor**” includes any other creditor appointed under Section 10 of this Act ;

“**Secured Creditor**” means a person holding a mortgage charge or lien on the property of the bankrupt, or any part thereof, as a security for a debt due to him from the bankrupt;

“**Sheriff**” includes any officer charged with the execution of a writ or other process;

“**Bankruptcy proceedings**” include all proceedings before the Court or before the official receiver from presentation of petition to discharge :

Bankruptcy proceedings are judicial proceedings within the meaning of the Penal Code and of the Law of Civil Procedure.

“**Bankrupt**” includes any Promoter, Director, Managing Director or employe[e] of a bankrupt Company, provided always that the responsibility of such Promoter, Director, Managing Director or employe[e] shall extend only to acts done or omissions made by him while actually engaged in the promotion or service of the Company

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PART 1.
PROCEEDINGS FROM PRESENTATION OF
PETITION TO DISCHARGE.

7. — Any creditor who has a liquidated claim of or exceeding Tcs. [=Ticals] 1,000 or any two or more creditors the aggregate amount of whose liquidated claims amounts to Tcs. 1,000 may petition the Court praying that, as the debtor has suspended payment, he may be adjudged bankrupt.

8. — If the petitioning creditor is a secured creditor, he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, in the same manner as if he were an unsecured creditor.

9. — (1) A bankruptcy petition shall be verified by affidavit of the creditor, or of some person on his behalf having personal knowledge of the facts therein contained :

(2) On the presentation of a petition the Court shall appoint a day and time for the hearing thereof and shall cause at least seven days notice of the same to be served on the debtor together with a copy of the petition.

10. — (1) The petitioning creditor shall upon presentation of a bankruptcy petition deposit with the Court the sum of Ticals 50 and shall take active interest in the conduct of the bankruptcy proceedings, and he shall assist the official receiver to the best of his ability in the realisation of the bankrupt's estate. The petitioning creditor shall be liable for all costs, damages and expenses incurred in bankruptcy proceedings. The official receiver may at any time call upon the petitioning creditor to make such further deposit as the official receiver may think necessary to guarantee him against any loss.

(2) Should the petitioning creditor refuse or neglect to assist the official receiver in the conduct of the bankruptcy proceedings or to pay a deposit as provided for by this section within seven days from receipt of a notice from the official receiver to that effect, the official receiver may, subject to the provisions of this section, appoint any creditor able and willing to act to take charge of the proceedings. Prior to his appointment such creditor shall deposit security to the satisfaction of the official receiver whereupon he shall be treated in all respects as if he were the petitioning creditor and be entitled to the costs provided for by Section 57.

(3) The creditors may at any meeting by an ordinary resolution appoint any one of their number able and willing to act to take charge of the proceedings in place of the petitioning creditor or other creditor appointed by the official receiver. Prior to his appointment such creditor shall deposit security to the satisfaction of the official

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receiver, whereupon he shall be treated in all respects as if he were the petitioning creditor and be entitled to the costs provided for by Section 57.

(4) Should the petitioning creditor refuse or neglect to act in the manner stated in this section, and should no other creditor be able and willing to undertake the duties therein stated, within one one month from the date of such refusal or neglect by the petitioning creditor as aforesaid the official receiver may report the same to the Court whereupon the Court may annul the bankruptcy or make such other order as the Court may think fit.

11. — (1) The Court shall on the application of the petitioning creditor, and subject to the deposit of such security as the Court may think fit, at any time after the presentation of a bankruptcy petition, and before a bankruptcy order is made, appoint the official receiver to be interim receiver of the property of the debtor, and direct him to take immediate possession thereof.

(2) Where an interim receiver has been appointed before the making of a bankruptcy order the date of such appointment shall for the purposes of this Act be deemed to be the date of the bankruptcy order.

12. — (1) Any creditor of the deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may, within six months from date of death present to the Court a petition praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.

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The Court shall order service to be made on the heirs or administrator or other person having the custody of the estate of the deceased.

(2) The Court shall hold an inquiry and, if satisfied that the estate of the deceased is insolvent, shall make an order of bankruptcy against the estate of the deceased, and the liquidation of the estate shall be carried out according to the provisions of this Act as far as is possible under the circumstances.

13. — (1) At the hearing of the petition the Court shall require proof of :

- (a) The debt of the petitioning creditor.
- (b) Suspension of payment by the debtor.
- (c) The service of the petition.

(2) If satisfied with the proof the Court shall adjudge the debtor bankrupt.

(3) If the Court is not satisfied with the proof of the matters above mentioned or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition and annul the

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interim receiving order, if any.

(4) If the Court is satisfied by the debtor that the causes of his suspension of payment are temporary and that there is a reasonable probability of his being able to pay his debts in full, it may give the debtor a respite for a period not exceeding one year, upon such terms as the Court may think fit.

(5) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such amount as would justify the petitioner in presenting a petition against him, the Court may on such security if any being given by or on behalf of the debtor as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt. [6]

(6) Where proceedings are stayed, the Court may adjudge the debtor bankrupt on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks fit, the petition in which proceedings have been stayed as aforesaid.

(7) A bankruptcy petition shall not after presentation be withdrawn without the leave of the Court.

14. — During the period which extends from the making of the interim receiving order or bankruptcy order up to the annulment of such order or to the end of the bankruptcy proceedings, the following rules apply:

- 1.— All the property of the bankrupt is vested in the official receiver, including any property which may accrue to the bankrupt by inheritance, gift, or otherwise ;
- 2.— The official receiver is the only person who may legally deal with the property of the bankrupt and who may legally receive any money or other property due to the bankrupt;
- 3.— The official receiver is entitled to collect any monies or other properties due to the bankrupt by any banker, treasurer, attorney or agent or by any other person. He is entitled to compromise claims, to bring or defend any action relating to the property of the bankrupt and to do any such act as may be necessary for a beneficial settlement of the affairs of the bankrupt;
- 4.— The official receiver is substituted to the bankrupt in all pending action in which the bankrupt is a plaintiff, defendant or intervener, and which relate to the property of the bankrupt; [7]
- 5.— Creditors to whom the bankrupt is indebted in respect of any debt provable in bankruptcy have no other remedy against the property or person of the bankrupt than the remedies described in this Act;

PART I. — PROCEEDINGS FROM PRESENTATION OF PETITION TO DISCHARGE.

6.— All acts done by the bankrupt in respect to his property or affairs are invalid, except acts done under the directions of a meeting of creditors or of the official receiver, as provided in sections 23 and 38.

15. — On bankruptcy order being made, the bankrupt shall within twenty-four hours after service of the same, file an affidavit in the office of the official receiver containing a true and correct statement of the names and residences of all the partners, if any, in his business. If the debtor alleges he has no partners, he shall within the time before specified file an affidavit to that effect. Such statement shall for the purposes of this Act be deemed to be part of the debtor's statement of his affairs referred to in section 20 hereof.

16. — On an interim receiving order or bankruptcy order being made, the interim receiver or official receiver shall forthwith take possession of any property, seals, books or documents of the bankrupt being in possession of the bankrupt or of any third person.

The interim receiving order or bankruptcy order is equivalent to a warrant of the Court ordering any property, seals, books or documents of the bankrupt being in possession of the bankrupt or of any third person to be seized and delivered to the interim receiver or official receiver.

17. — In any of the undermentioned cases, the Court may, on or after granting an interim receiving order or bankruptcy order, order the debtor to be arrested and detained until he shall give security to the satisfaction of the Court, or until such time as the Court may think fit : —

- a. If it appears to the Court that there is probable cause for believing that the debtor has absconded or is about to abscond with a view of avoiding, delaying or embarrassing proceedings in bankruptcy against him.
- b. If it appears to the Court that there is probable cause for believing that the debtor has committed or is about to commit any of the offences punishable under this Act.

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Provided that the debtor before or at the time of his arrest is served with a copy of the bankruptcy petition.

The cost of maintaining any person in prison under this section shall be prepaid by the applicant from time to time to the official re-receiver on behalf of the gaol authority.

18. — (1) The official receiver shall upon receiving notice of his appointment insert a notice of the interim receiving order or bankruptcy order in the *Government Gazette*, and advertise the same in such local papers as he may think necessary.

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(2) The notice of a bankruptcy order shall specify that the creditors of the bankrupt must apply for payment to the official receiver within two months.

19. — The bankrupt shall, on being notified of a bankruptcy order or interim receiving order, deliver to the official receiver or interim receiver all his property, together with the seals, books and other documents in his possession relating to his property or affairs.

20. — The bankrupt shall, within seven days from the date of service of the bankruptcy order or such further time as the official receiver may allow, make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by an affidavit, and showing the cause of the bankrupt's insolvency, full particulars of assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as the official receiver may require.

21. — (1) As soon as may be after the making of a bankruptcy order against a debtor a general meeting of his creditors (in this Act referred to as the first meeting of the creditors) shall be held for the purpose of considering whether a proposal for a composition shall be entertained, and generally as to the mode of dealing with the bankrupt's property.

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(2) The official receiver shall give to the creditors seven days notice of the first and all subsequent meetings of creditors.

(3) Every debtor against whom a bankruptcy order is made shall attend the first and all subsequent meetings of his creditors, and shall submit to such examination and give such information as the meeting may require.

22. — (1) A creditor may vote at meeting of creditors either in person or by proxy.

(2) No creditor or any person acting under a proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or principal, in a position to receive any remuneration out of the estate of the bankrupt otherwise than as a creditor rateably with the other creditors of the bankrupt.

23. — The creditors may by ordinary resolution at any meeting appoint any person or persons (including the bankrupt) manager or managers of the bankrupt's estate with such powers as may be entrusted to him or them by the official receiver.

(1) The manager or managers shall give security and account in such manner as the official receiver may direct.

(2) The manager or managers may receive such remuneration (if any) as the creditors by an ordinary resolution at any meeting may determine, or in

PART I. — PROCEEDINGS FROM PRESENTATION OF PETITION TO DISCHARGE.

default of any such resolution as the official receiver may determine.

24. — (1) As soon as conveniently may be after the conclusion of the first meeting of the creditors, the bankrupt shall be examined by the Court as to his conduct, dealings and property.

(2) The official receiver shall give seven days notice to the bankrupt and creditors of the date fixed for the public examination of the bankrupt. [10]

(3) Any creditor who has tendered a proof, or his representative authorized in writing, may question the bankrupt concerning his affairs, and the causes of his failure.

(4) The official receiver shall take part in the examination of the bankrupt; and for the purpose thereof may employ a solicitor or attorney.

(5) The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Notes of the examination shall be taken down in writing, and read over to and signed by the bankrupt, and may thereafter be used in evidence against him. A certified copy thereof shall be sent by the Court to the official receiver,

(6) When the Court is of opinion that the affairs of the bankrupt have been sufficiently investigated, it shall by order declare that his examination is concluded; but such order shall not preclude the Court from directing a further examination of the bankrupt as to his conduct, dealings and property whenever it thinks fit to do so.

25. — Where the bankrupt is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the bankrupt be examined on such terms, in such manner and at such place as to the Court seems expedient.

26. — (1) Where it is proved to the satisfaction of the Court that the debts of the bankrupt have been paid in full the Court shall annul the bankruptcy and make such order as to the payment of the costs of the bankruptcy proceedings as it may think fit.

(2) Where a bankruptcy is annulled under this section all acts thereunder duly done by the official receiver or other person acting under his authority or by the Court shall be valid but the property of the debtor who was adjudged bankrupt shall revert to the debtor. [11]

(3) The official receiver shall cause notice of the order annulling a bankruptcy to be inserted in the *Government Gazette* and published in at least one local paper,

(4) For the purposes of this section any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond with such

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sureties as the Court approves to pay the amount of the debt with costs.

Any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

27. — (1) A bankrupt may at any time after the conclusion of his public examination, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application in open Court

(2) Prior to the application for his order of discharge the bankrupt shall deposit with the official receiver such sum not exceeding 50 ticals as the Official Receiver may consider necessary to cover the costs and expenses of and incidental to the application for discharge.

(3) The official receiver shall send fourteen days notice of the date of the hearing of the application for discharge to each creditor who has proved, and advertise the same in the *Government Gazette* and at least one local paper, and the Court may hear the official receiver, and any creditor or his representative. At the hearing the Court may examine the bankrupt on oath and receive such evidence as it may think fit.

(4) On the hearing of the application the Court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs prior to and during his bankruptcy, and may either grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time or grant an order of discharge subject to any condition the Court may think fit. Provided that the Court shall refuse the discharge in all cases where the bankrupt has committed any offence under this Act, unless for special reasons the Court otherwise determines, and shall, on proof of any of the facts mentioned in (5), either

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- (a) refuse the discharge ; or
- (b) suspend the discharge for a period of not less than two years; or
- (c) suspend the discharge until a dividend of not less than fifty per cent has been paid to the creditors; or
- (d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts.

Provided, that if at any time after the expiration of two years from the date of any order made under the section the bankrupt shall satisfy the Court that he is unable to

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comply with the terms of such order, the Court may modify the terms of the order in such manner and upon such conditions as it may think fit.

(5) The facts referred to in (4) are: —

- (a) That the bankrupt's assets are not of the value equal to fifty per cent of the amount of his unsecured liabilities, unless he satisfies the Court that the reason for the same has arisen from circumstances for which he cannot justly be held responsible ;
- (b) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy ;
- (c) That the bankrupt has continued to trade after knowing himself to be insolvent ;
- (d) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it ;
- (e) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
- (f) That the bankrupt has brought on, or contributed to, his bankruptcy by rash or hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs ;
- (g) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him ;
- (h) That the bankrupt has within three months preceding the date of the bankruptcy petition incurred unjustifiable expense by bringing a frivolous or vexatious action ;
- (i) That the bankrupt has within three months preceding the date of the bankruptcy petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors;
- (j) That the bankrupt has within three months preceding the date of the bankruptcy petition incurred liabilities with a view of making his assets equal to fifty per cent of the amount of his unsecured liabilities;
- (k) That the bankrupt has on any previous occasion been adjudged bankrupt or made a composition with his creditors :

(1) That the bankrupt has been guilty of any fraud;

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- (m) That the bankrupt has within three months immediately preceding the date of the bankruptcy petition sent goods out of the jurisdiction of the Court under circumstances which afford reasonable grounds for believing that the transaction was not a *bona fide* commercial transaction.

28.— For the purposes of the preceding section the following presumptions shall be made : —

- (a) If at any time after the expiration of six months from the date of the bankruptcy order the official receiver reports to the Court that the value of the assets realised together with the estimated value of the assets realisable is insufficient to pay a dividend of fifty per cent on the debts proved in the bankruptcy, it shall be presumed (until the contrary be proved) that the bankrupt has continued to trade after knowing or having reason to believe himself to be insolvent ;
- (b) In determining whether a bankrupt was or knew or had reason to believe himself to be insolvent at any particular date every debt owing to him by any person resident out of the jurisdiction which debt had been at such date due for more than twelve months shall be excluded from the computation of the value of the assets and for the purpose of such computation shall be deemed not to be an asset.
- (c) A bankrupt shall be deemed to have continued to trade after knowing or having reason to believe himself to be insolvent if, having continued to trade after he was in fact insolvent:
 - (I) he is unable to satisfy the Court that he had reasonable ground for believing himself to be solvent; or
 - (II) he fails without reasonable excuse (proof whereof shall lie on him) to produce a proper balance sheet for each of the three years immediately preceding the bankruptcy: every such balance-sheet being made within a reasonable time after the expiration of the year to which it relates and showing the true state of his affairs at the end of such year.
- (d) Any preference given by the bankrupt to any creditor within the three months immediately preceding the date of the bankruptcy petition shall (until the contrary be proved) be deemed to be undue.

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29. — (1) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the official receiver may require in the realization and distribution of such of his property as is vested in the official receiver and if he fails to do so he shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any thing duly done subsequent to the discharge, but before its revocation.

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(2) An order of discharge shall not release the bankrupt from any debt on a recognizance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or on a bail bond entered into for the appearance of any person prosecuted for any such offence, unless the Ministry of Finance certify in writing their consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability not provable in bankruptcy or any debt or liability incurred by means of any fraud nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(3) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(4) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge and may give this Act and the special matter in evidence.

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(5) An order of discharge shall not release any person who at the date of the bankruptcy petition was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

30. — (1) Where a bankrupt has not obtained his discharge the following consequences shall ensue: —

- (a) The bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction in writing of the official receiver.
- (b) The bankrupt shall once in every six months render to the official receiver an account of all money and property which have come to his hands for his own use during the preceding six months and shall pay and make over to the official receiver so much of the same moneys and property as shall not have been expended by him with the consent of the official receiver in the necessary expenses of maintenance of himself and his family.
- (c) The bankrupt shall not leave the jurisdiction of the Court without the previous permission in writing of the official receiver or of the Court.

(2) The bankrupt who makes default in performing or observing any of the provisions of this section shall be deemed guilty of an offence under this Act and shall be liable to imprisonment not exceeding three months.

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31. — (1) When the official receiver has realised all the property of the bankrupt or so much thereof as can in his opinion be realised without needlessly protracting the proceedings in bankruptcy and has distributed a final dividend (if any) or has ceased to act by reason of a composition having been approved, he shall file a report to the Court containing an account of all monies of the bankrupt received and expended by him and praying to be released from his duties as official receiver. The Court shall either grant or withhold the release accordingly.

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(2) Where the release is withheld the Court may save as is hereinbefore provided on the application of a creditor or any person interested make such order as it thinks just charging the official receiver with the consequences of any act done or default made by him contrary to his duties.

(3) Any order of the Court releasing the official receiver shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as official receiver.

32. — Any creditor of a bankrupt may inspect at all reasonable times personally or by agent any books, papers or documents of the bankruptcy in the possession of the official receiver, and take any copy thereof.

33. — Notice of the first meeting of creditors shall be given in writing by the official receiver to each creditor known to him, and advertised in a local paper.

Other notices to creditors may be given by letter or by advertisement in a local paper, as the official receiver may think fit.

PART II.
BANKRUPTCY PROCEEDINGS AGAINST
PARTNERSHIPS.

34. — Whenever a bankruptcy petition is made against a partnership, an interim receiver shall be appointed for the property of the persons who are designated in the petition as being partners in such partnership, provided there be prima facie evidence that they are partners.

The Court may subject the appointment of an interim receiver for the property of a separate partner to the deposit by the petitioning creditor of such security as the Court may think fit for covering eventual compensation.

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Should it be found afterwards that the person for whose property an interim receiver was appointed was not a partner in the partnership, the Court shall withdraw the appointment. If the said person has suffered any injury by reason of the appointment of the interim receiver the Court may grant him compensation for such injury, to be paid by the petitioning creditor, or out of the estate of the bankrupt, as the Court shall direct.

35. — When a bankruptcy order is made against a partnership in the partnership name, the Court shall at that time or on a subsequent motion of the petitioning creditor, or on application of the official receiver, adjudge bankrupt as a member of the partnership any person who is proved to the satisfaction of the Court to be a partner.

36. — If the partnership is registered, a certified copy of the list of partners delivered by the proper Registrar shall be conclusive evidence that a person is a partner in such partnership.

37. — If the partnership is a limited one, no partners with limited liability may be declared bankrupt unless it is proved to the satisfaction of the Court that such partner has not paid his contribution in full.

PART III.
REALISATION OF ASSETS.

38. — (1) The bankrupt shall wait at such times on the official receiver, or manager, and generally do all such acts in relation to his property and the distribution of the proceeds amongst his creditors, as may be required by the official receiver, or manager, or may be prescribed by general rules, or be directed by the Court by any Special order made in reference to any particular case.

(2) He shall aid to the utmost of his power in the realisation of his property and the distribution of the proceeds amongst his creditors and amongst other things shall be bound if required by the official receiver so to do to answer all such questions and to submit to such medical examination and to do all such other things as may be necessary for the purpose of effecting an insurance on his life.

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39. — (1) The Court may, on the application of the official receiver or the official receiver may at any time after a bankruptcy order has been made against a debtor, summon before it or him and examine the bankrupt or his wife, or any person known or suspected to have in his possession any property belonging to the bankrupt, or any person whom the Court, or the official receiver may deem capable of giving information respecting the bankrupt, his dealings or property, and the Court or the official receiver may require any such person to produce any document in his custody or power relating to the bankrupt, his dealings or property.

(2) If any person on examination before the Court or by the official receiver admits that he has in his possession any property belonging to the bankrupt, the Court may, on the application of the official receiver, order him to deliver such property to the official receiver.

40. — (1) The official receiver shall as soon as may be after a bankruptcy order has been made against a debtor prepare and file in Court a list of persons supposed to be indebted to the bankrupt with the amounts in which they are supposed to be so indebted set opposite to their names respectively. Before finally setting the name and the amount of the debt of any person on such list the official receiver shall give fourteen days notice in writing to such person stating that he has placed such person upon the list of debtors to the estate in the amount in the notice specified and that unless such person on or before the expiration of such notice gives to the official receiver notice in writing of his intention to dispute his indebtedness he will be deemed to admit that the amount set opposite his name in such list is due and owing by him to the bankrupt and will be settled on such list accordingly.

(2) A person included in such list who does not give notice of his intention to dispute his indebtedness within the time limited in that behalf shall be settled upon such list and the Court may on the application of the official receiver issue a warrant

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of execution against him for the amount set opposite his name in such list in the same way as if judgment had been entered up against him for such amount in favour of the official receiver,

(3) A person alleged to be indebted to the bankrupt as aforesaid may, within the time fixed in the notice, apply to the Court by motion for leave to dispute his indebtedness or the amount thereof and the Court may if it thinks fit make such order for determining the question as may seem expedient upon such person giving such security for costs and for the alleged debt as may seem reasonable.

41. — The official receiver may within three months of the receipt of notice of any onerous contract or property which has become vested in him disclaim the same and any person injured by the operation of such disclaimer may prove as a creditor under the bankruptcy to the extent of the injury.

42. — (1) The property of the bankrupt divisible amongst his creditors, shall not comprise the tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value inclusive of tools and apparel and bedding not exceeding Ticals 100 in the whole.

(2) But it shall comprise all goods being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof.

43. — Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be ; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court, who may, execute it according to its tenor.

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44. — (1) When under an execution in respect of a judgment for a sum exceeding Ticals 200, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct therefrom his costs together with the costs of the execution creditor, and retain the balance for fourteen days, and if within that time notice is served on him of the presentation of a bankruptcy petition against the debtor, and a receiving order is made against the debtor thereon, the sheriff shall pay the balance to the official receiver to be part of the estate of the bankrupt.

(2) Should any property of the bankrupt have been attached or seized in the hand of the sheriff at the request of the creditor of the bankrupt, the sheriff shall, on

PART III. — REALISATION OF ASSETS.

notification of the bankruptcy order, sell such property and deliver the proceeds to the official receiver, deducting therefrom the costs and expenses properly incurred by the creditor, calculated on the amount actually realised by execution.

The creditor may prove in bankruptcy for the balance of such costs and expenses.

45. — The Court shall on the application of the official receiver declare null and void as against the official receiver any conveyance or transfer of property made by the bankrupt within two years prior to the date of the bankruptcy order unless the transferee can show to the satisfaction of the Court that such conveyance or transfer was entered into in good faith and for valuable consideration.

46. — Every transfer or conveyance of property or every act done or suffered by the bankrupt with a view of giving any one or more creditor or creditors preference over the other creditors shall, if the bankrupt be adjudged bankrupt on a bankruptcy petition presented against him within three months after the date of such transfer of conveyance, be deemed void as against the official receiver. Provided that nothing in this section shall affect the right of any person making title in good faith without notice of such bankruptcy petition and for valuable consideration through or under a creditor of the bankrupt. [22]

47. — Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain preferences, nothing in this Act shall invalidate, in the case of bankruptcy,

- (a) Any payment by the bankrupt to any of his creditors:
- (b) Any payment or delivery to the bankrupt :
- (c) Any transaction by or with the bankrupt for valuable consideration : —
Provided that
 - (1) Such payment or transaction took place before the bankruptcy order, and
 - (2) At the time of the payment or transaction such person other than the bankrupt has no notice of the suspension of payment on which the bankruptcy petition was founded.

PART IV.
PROOF OF DEBTS.

48. — The creditors of the bankrupt are allowed two months time from date of publication of the bankruptcy order in the *Government Gazette* to apply by affidavit to the official receiver for payments of their debts.

49. — (1) Every affidavit shall be made by the creditor himself, or by some person authorized on his behalf. If made by a person so authorized, it shall state his authority and means of knowledge.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debts, and specifying the vouchers if any, by which the same can be substantiated. The official receiver may at any time call for the production of the vouchers.

(3) A fee of four ticals shall be paid on each affidavit in support of proof of debt. **[23]**

(4) A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

50. — Where there have been mutual credits, mutual debts, or other mutual dealings between a bankrupt, and any other person proving or claiming to prove a debt under the bankruptcy, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

51. — The following creditors cannot prove in bankruptcy :

(1) Creditors who at the time when the debt was contracted knew that a bankruptcy petition had been presented against the debtor.

(2) Creditors who did not apply by affidavit to the official receiver within the time limited.

52. — (1) If a secured creditor realizes his security he may prove for the balance due to him, after deducting the net amount realized.

(2) If a secured creditor surrenders his security to the official receiver for the general benefit of the creditors he may prove for his whole debt.

(3) If a secured creditor does not either realize or surrender his security, he shall,

PART IV. — PROOF OF DEBTS.

before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) (a) When a security is so valued the official receiver may at any time redeem it on payment to the creditor of the assessed value.

(b) If the official receiver is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale by public auction at such time and place as may be agreed on between the creditor and the official receiver, or in default of agreement as the Court may direct. The creditor, or the official receiver on behalf of the estate, may bid or purchase.

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(5) If a creditor after having valued his security subsequently realizes it, or if it be realized under the provisions of this section the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

(6) If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

53. — (1) An estimate shall be made by the official receiver of the value of any unliquidated debt or liability provable as aforesaid.

(2) Any person aggrieved by any estimate made by the official receiver as aforesaid may appeal to the Court within fourteen days from the date of notice of the official receiver's estimate and the Court shall make such order as it thinks fit.

(3) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

54. — (1) On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for and which is overdue at the date of the adjudication order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding seven and a half *per centum per annum* to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

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(2) Where a debt has been proved against a bankrupt's estate and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding seven and a half *per centum per annum*, without prejudice to the right of the creditor

PART IV. — PROOF OF DEBTS.

to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

55. — (1) The official receiver shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

(2) If any creditor is dissatisfied with the decision of the official receiver in respect of a proof, he may appeal to the Court within fourteen days from the time when he is informed of the decision of the official receiver. Such appeal shall be made by motion but the creditor shall pay the two and a half percentage fees and all the other usual fees of an ordinary action on the amount in dispute.

(3) The Court may also expunge or reduce a proof upon the application of a creditor if the official receiver declines to interfere in the matter, or in the case of a composition, upon the application of the debtor.

PART V.
DISTRIBUTION OF PROPERTY.

56. — (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the official receiver shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) Before declaring a dividend the official receiver shall cause seven days notice of his intention to do so to be inserted in the *Government Gazette*, and advertised in a local paper.

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(3) When the official receiver has declared a dividend he shall send to each creditor who has proved his debt a notice showing the amount of the dividend and when and how it is payable.

(4) No dividend shall be paid to any creditor which does not amount to one tical.

57. — (1) In the distribution of the property of the bankrupt, there shall be paid in priority to all other debts and in the following order: —

- (a) All expenses actually incurred by the official receiver in the administration of the estate.
- (b) A five per cent commission on the net assets of the estate realized in bankruptcy or under a composition.
- (c) Such costs of the petitioning creditor including attorney's fees, as shall be allowed by the Court or the official receiver.

(2) Subject to the payment in full of the foregoing there shall thereafter be paid equally between themselves : —

- (a) All land property or other taxes (or any local rates), due from the bankrupt at the date of the bankruptcy order and having become due and payable within six months next before that time.
- (b) All wages or salary of any clerk, servant or work-man of the bankrupt for the two months immediately preceding the date of the bankruptcy order not exceeding Ticals 300.
- (c) All rent due in respect of any dwelling house and premises in the occupation of the bankrupt for the two months immediately preceding the date of the bankruptcy order.

58. — (1) All debts proved in the bankruptcy other than those described in

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PART V. — DISTRIBUTION OF PROPERTY.

Section 57 shall be *pari passu*.

(2) If there is any surplus after payment of the debts, it shall be applied in payment of interest from the date of the bankruptcy order at the rate of seven and a half *per centum per annum* on all debts proved in the bankruptcy.

(3) In the calculation and distribution of a dividend the official receiver shall make provision for any disputed proofs or claims and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

59. — When the official receiver has realized all the property of the bankrupt, or so much thereof as can be realized without needlessly protracting the proceedings, he shall declare a final dividend, but before so doing he shall give fourteen days notice to the persons whose claims to be creditors have been notified to him within the two months period, but not established to his satisfaction, that if they do not establish their claims within such time, he will proceed to make a final dividend without regard to their claims.

60. — (1) Before declaring a final dividend the official receiver shall give notice in writing to any person having any claim for work done or money spent by order of the official receiver in the winding up of an estate to deliver his account to the official receiver within fourteen days after receipt of such notice.

(2) If such person fails to do so within such time or such further time as the official receiver may allow, the official receiver shall declare and distribute the final dividend without regard to any such claim and thereupon the claim shall be forfeited both as against the official receiver personally and as against the estate.

61. — The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors with interest as by this Act provided and of the costs, charges and expenses of the proceedings under the bankruptcy petition.

PART VI.
COMPOSITION.

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62. — (1) The creditors may by ordinary resolution at a meeting resolve to entertain a proposal submitted or approved by the bankrupt for a composition or arrangement of the bankrupt's affairs.

(2) No composition shall be valid unless it is confirmed at a subsequent meeting of the creditors by a special resolution and is approved by the Court.

(3) Any creditor who has proved his debt may assent to or dissent from such composition by a letter addressed to the official receiver so as to be received by the official receiver not later than the day preceding such subsequent meeting and a creditor so assenting or dissenting shall be taken as being present and voting at such meeting.

(4) The subsequent meeting shall be summoned by the official receiver by not less than seven days notice to the creditors, stating the purpose for which the meeting is convened.

(5) The bankrupt or the official receiver may after the composition is accepted by the creditors apply to the Court to approve it and seven days notice of the time appointed for hearing the application shall be given to the creditors. Such application shall be made and heard in open Court.

(6) The Court before approving a composition shall hear a report of the official receiver as to the terms of the composition and as to the conduct of the bankrupt and shall hear any objections which may be made by or on behalf of any creditor.

(7) If the Court is of opinion that the conditions required by No. 1 to 6 have not been complied with, or that the terms of the composition give an undue preference to any creditor over another creditor, the Court shall refuse to approve the composition.

(8) In any other case, the Court shall approve the composition and such approval shall be embodied in an order of the Court.

Notice of every composition so approved by the Court shall within seven days of such approval be inserted in the *Government Gazette* and in such paper as the official receiver may direct.

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(9) A composition accepted and approved in pursuance of this section shall be binding on all creditors so far as it relates to any debts due to them from the bankrupt and provable in the bankruptcy.

(10) If the Court approve the proposal it may make an order annulling the bankruptcy and vesting the property of the debtor in him or in any other person on such terms and subject to such conditions (if any) as the Court may think fit.

PART VI. — COMPOSITION.

(11) No composition shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(12) A certificate of the official receiver that a composition has been duly accepted and approved shall in the absence of fraud be conclusive evidence as to its validity.

(13) If default is made in payment of any instalment due in pursuance of the composition or if it appears to the Court that the approval of the Court was obtained by fraud the Court may if it thinks fit on application by any creditor re-adjudge the debtor bankrupt and annul the composition or any order made thereon but without prejudice to the validity of anything duly done under or in pursuance of the composition. All debts contracted by the debtor before the date of this re-adjudication shall, save as provided by this Act, be provable in the bankruptcy.

PART VII.
OFFENCES AND PENALTIES.

63. — (1) Where it appears to the official receiver in the course of proceedings in bankruptcy that there is ground for believing that a bankrupt or any other person has been guilty of an offence under this Act or the Penal Code it shall be the duty of the official receiver to institute a prosecution against such bankrupt or other person.

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(2) Where a bankrupt has been guilty of any offence he shall not be exempt from prosecution therefor by reason that a composition has been accepted and approved.

64. — A bankrupt who fails without reasonable excuse to comply with any of the requirements of sections 19, 20, 21 (3) or 38 shall be punished with imprisonment not exceeding six months.

65. — A bankrupt who has been required to appear before the Court or the official receiver or a meeting of his creditors according to the provisions of the present Act, and fails to appear without reasonable excuse, shall be punished with imprisonment not exceeding six months.

66. — A bankrupt who commits any of the following offences shall be punished with imprisonment not exceeding two years :

(1) If after the beginning of the bankruptcy proceedings or within four months next before such beginning, the bankrupt, with intent to prevent the attachment or seizure of his property, conceals, transfers or delivers to any person any part of such property, or makes or causes to be made any charge on such property, or suffers any judgment to be passed against him for a sum not due.

(2) If after the beginning of the bankruptcy proceedings or within four months next before such beginning, he conceals, destroys, alters or forges any seal, book or document relating to his property or affairs, without prejudice to the punishment prescribed by the Penal Code for forgery.

(3) If after the beginning of the bankruptcy proceedings or within four months next before such beginning, he makes any omission or any false entry or statement in any book or document relating to his property or affairs, without prejudice to the punishment prescribed by the Penal Code for fabricating false evidence.

(4) If he makes any material omission or false declaration in any statement relating to his property or affairs and made before the Court, the official receiver or a meeting of his creditors.

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(5) If after the beginning of the bankruptcy proceedings he refuses or prevents the

PART VII. — OFFENCES AND PENALTIES.

production of any seal, book or document relating to his property or affairs.

(6) If after the beginning of the bankruptcy proceedings he attempts to account for any part of his property by fictitious losses or expenses.

(7) If knowing or having reason to believe that a false debt has been proved by any person under the bankruptcy he fails for a period of one month to inform the official receiver thereof in writing

(8) If he commits any fraud, or if he offers, or gives or agrees to give any undue advantage, for the purpose of obtaining the consent of his creditors or any of them to any composition or agreement relating to his affairs or bankruptcy.

67. — An undischarged bankrupt who obtains credit to the extent of one hundred Ticals or upwards without disclosing in writing that he is an undischarged bankrupt, shall be punished with imprisonment not exceeding two years.

68. — A creditor who demands, or accepts, or agrees to accept for himself or for any other person any undue advantage for agreeing to a composition, shall be punished with fine not exceeding five times the value of such undue advantage.

69. — A creditor who demands, accepts or agrees to accept for himself or for any other person any undue advantage for forbearing to oppose or for consenting to the discharge of a bankrupt, shall be punished with fine not exceeding three times the value of such undue advantage.

70. — A person untruthfully stating himself in writing to be a creditor of the bankrupt for the purpose of obtaining access to or copies of any documents relating to the bankruptcy proceedings, shall be punished with fine not exceeding five hundred ticals.

PART VIII.
DUTIES OF OFFICIAL RECEIVER.

71. — (1) The duties of official receiver shall have relation both to the conduct of the bankrupt and to the administration of his estate.

(2) An official receiver for the purpose of affidavits, verifying proofs and petitions and for the purpose of other proceedings under this Act, may administer oaths.

(3) An official receiver may for the purpose of his duties issue a summons or *subpœna* for the attendance of any person before him to give evidence or to produce any document.

72. — As regards the bankrupt it shall be the duty of the official receiver : —

(1) To investigate the conduct of the bankrupt and to report to the Court thereon.

(2) To make such other reports concerning the conduct of the bankrupt as the Court may direct.

(3) To take such part and give such assistance in relation to the prosecution of any person charged with an offence under this Act as the Court may direct.

73. — As regards the estate of a bankrupt it shall be the duty of the official receiver : —

(1) To act as receiver of the bankrupt's estate and to act as manager thereof where a manager has not been appointed.

(2) To raise money or make advances for the purpose of the estate in any case where it appears necessary to do so.

(3) To summon meetings of creditors at such times as he thinks fit or the Court may direct or whenever requested in writing so to do by one fourth in value of the creditors who have proved their debts.

(4) To preside at all meetings of creditors held under this Act.

(5) To advertise the interim receiving order, the bankruptcy order, the date of the bankrupt's public examination, and such other matters as it may be necessary to advertise.

(6) To divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances

PART VIII. — DUTIES OF OFFICIAL RECEIVER.

cannot be readily or advantageously sold.

(7) And generally to do all such acts and things as may be necessary for the purpose of winding up the estate which the bankrupt himself could have done had he not been declared bankrupt.

74. — The official receiver may sue and be sued by the official name of "the official receiver of the property of a bankrupt" inserting the name of the bankrupt and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office and do all other acts necessary to be done in the execution of his office.

75. — Any suit or process commenced against an official receiver or any person acting under this Act for anything done or omitted to be done under the provisions of the Act shall be commenced within six months after the accruing of the cause of action and not after wards.

PART IX.
GENERAL.

76. — (1) The Minister of Justice may from time to time make general rules for carrying into effect the objects of this Act.

(2) The Civil Procedure Act of the year 127 shall govern all proceedings under this Act so far as is practicable.

(3) Every application to the Court shall be by motion and the Court shall direct service to be made on the official receiver and on all parties affected or likely to be affected by the motion.

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77. — (1) A copy of the *Government Gazette* containing any notice inserted therein in pursuance of this Act or the rules made under this Act shall be evidence of the facts stated in the notice.

(2) The production of copy of the Gazette containing any notice of a bankruptcy order or interim receiving order or order annulling a bankruptcy shall be conclusive proof in all legal proceedings of the order having been duly made and of its date.

(3) A minute of proceedings at a meeting of creditors under this Act signed by or on behalf of the official receiver shall be received in evidence without further proof.

(4) A report by the official receiver to the Court shall be *prima facie* evidence of the facts alleged in the report.

78. — (1) If the bankrupt or any other person is aggrieved by any action or decision of the official receiver he may apply to the Court within fourteen days from the time he received notice of such act or decision.

(2) The Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks fit.

79. — All orders of the Court may be appealed to the Court of Appeal.

No further appeal shall be allowed to the Dika Court save on a question of law.

80. — All orders or judgments under this Act shall be executed notwithstanding appeal, unless otherwise provided in the order or judgment.

Due notice of all appeals under this Act shall be given to the official receiver.

