

ACT No. XXVIII OF 1865.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 27th September 1865.)

An Act to provide for the more speedy liquidation of Insolvent Traders' Estates in Bombay.

Whereas it is expedient to provide for the more speedy liquidation of Insolvent Traders' Estates in Bombay ; It is enacted as follows :—

Definition of terms.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them :—

The word “ Trader ” shall mean any person or partnership, not being a joint stock Company, carrying on trade or mercantile operations within the local limits of the ordinary original Civil jurisdiction of the High Court of Judicature at Bombay.

“ The Court.

The expression “ the Court ” shall mean the High Court of Judicature at Bombay in its ordinary original Civil jurisdiction.

Number.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

When traders' estates may be wound up under this Act.

2. Whenever any trader shall be, or shall declare himself, unable to pay his debts, it shall be lawful to wind up the estate of such trader by trustees under the control of the Court.

Trader when to be deemed unable to pay his debts.

3. A trader shall be deemed to be unable to pay his debts—

1.—Whenever a creditor, to whom the trader is indebted in a sum exceeding five thousand Rupees then due, has duly served on the trader a demand in writing requiring the trader to pay the sum so due, and the trader has for the
space

space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor.

2.—Whenever satisfaction of a judgment, decree, or order of any Court in favour of any creditor in any suit or other legal proceeding cannot be obtained.

3.—Whenever the trader has committed an act of insolvency within the meaning of an Act passed in the eleventh and twelfth year of the reign of Her Majesty Queen Victoria, intituled An Act to consolidate and amend the Laws relating to Insolvent Debtors in India.

4. At any meeting of creditors held after a trader is, or has declared himself, unable to pay his debts, and whether such meeting shall have been convened at the instance of the trader or of one or more of his creditors, provided that six days' notice of such meeting shall have been given by advertisement in two of the daily English newspapers and in two of the vernacular newspapers published in Bombay, it shall be lawful for a majority in number and unsecured value of the creditors present or represented at such meeting, to resolve that the estate of such trader ought to be wound up under the management of trustees, and that an application shall be made to the Court for the purpose; and upon such resolution being adopted, the meeting shall proceed to nominate three or more trustees for the liquidation of such estate, and to fix the amount or rate of salary or remuneration to be paid to such trustees, and the amount of security (if any) to be given by such trustees.

5. Every such meeting shall be presided over by a Chairman elected by the meeting, and such Chairman shall determine the right of persons present to vote upon the matters aforesaid, and shall report the resolutions adopted by such meeting to the Court by filing a copy thereof under his own signature in the office of the Prothonotary of the Court within two days from the date of such resolutions being passed, and shall also cause such resolutions to be advertized without delay in the Government Gazette and in two of the daily English newspapers and two of the vernacular newspapers published in Bombay: and all necessary expenses incurred by or by the authority of the Chairman in carrying out the resolutions of the meeting shall be payable by the trustees out of the estate.

6. Upon such resolutions being so filed in Court as aforesaid, the Chairman or any creditor nominated in that behalf by the meeting may apply to the Court for an order to wind up the estate on the terms of such resolutions. Every such application shall be in the form of a petition

tion and shall be verified by the petitioner in like manner as plaints are required to be verified by Act VIII of 1859; and on hearing such petition, if the Court shall

Power for Court to confirm or modify resolutions and give directions.

be satisfied that the resolutions were duly carried, and that their terms are reasonable and calculated to benefit the general body of the creditors under the estate, it shall confirm or modify the same as it shall deem fit, and shall make order accordingly, and in such order shall give such directions as to the management of the estate and the advertisement of such order as it shall deem expedient; Provided always that the trader or any creditor may, within six days after the making of such order, apply to the Court to set aside the same either wholly or in part, giving to the petitioner reasonable notice of such application.

7. Upon the making of such order, all the moveable and immoveable estate and

Order of Court to vest trader's estate on trustees.

effects of such trader and all debts due to him and all the future estate, right, title, interest and trust of such trader in or to any moveable or immoveable property which such trader may purchase or which may revert, descend, be devised or bequeathed or come to him, and all debts growing due to such trader in respect of transactions included in the liquidation, before the Court shall have made its final order in respect to the liquidation of his estate, shall vest in the trustees appointed by the Court, and all books, papers, deeds, documents and writings in any way relating to such trader's estates and effects in his possession or under his custody or control, shall be forthwith deposited with such trustees; and such order shall be entered of record in the said Court; and such notice thereof shall be published as the 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 resolutions in Court as aforesaid, and shall instantly and without any conveyance or assignment vest all the moveable and immoveable estate, effects and debts as aforesaid of such trader in the said trustees.

8. After the date of such order all suits and legal proceedings of whatever

Protection to trader after vesting order.

kind in respect of such trader's civil liabilities shall be stayed, and no execution, attachment or other process against such trader's property in respect of any debt, and no process against his person in respect of any debt, other than such process by writ or warrant as may be had against a debtor about to depart out of the jurisdiction of the Court, shall be available to any creditor or claimant without leave of the Court.

Power of Trustees.

9. The trustees shall have power by virtue of this Act in their own name to do the following things:—

To bring or defend any action suit or prosecution or other legal proceeding Civil or Criminal on behalf of such trader; and on like behalf to claim, prove and draw

draw dividends under any bankruptcy, insolvency or liquidation by trustees under this Act.

To carry on the business of such trader so far as may be necessary for the beneficial liquidation of the same.

To sell the property, moveable or immoveable, effects and things in action of such trader by public auction or private contract, with power if they think fit to transfer the whole thereof to any person or Company, or to sell the same in parcels.

To execute on behalf of such trader all deeds, receipts and other documents they may think necessary.

To refer disputes to arbitration and compromise any debts or claims.

To draw, accept, make and endorse any Hoondee, Bill of Exchange or Promissory Note on behalf of such trader, and also to raise upon the security of the assets of such trader's estate from time to time any sum or sums of money, whenever the same shall be necessary for the purposes of this Act.

To do and execute all such other things as may be necessary for winding up the affairs and distributing the assets of such trader.

To apply to the Court from time to time as occasion may require for its assistance in carrying out the powers conferred upon the trustees by this Act; Provided always that such trader or any creditor shall be at liberty to apply to the Court to set aside or restrain any act done or about to be done by the said trustees under this Act, and the Court shall make such order upon such application with respect to costs and otherwise as it shall deem fit; and provided also that nothing herein contained shall discharge the said trustees or any of them from liability to account to the said Court for acts done by them in the liquidation of the estate of the trader under this Act.

10. The trustees shall have power to summon before them and to examine upon oath or otherwise such trader and any of his assistants, clerks or servants whom the trustees may deem capable of giving any information material to the full disclosure of the trader's transactions, books and affairs, or to the winding up of the same; and the provisions of the Acts in force for the time being for procuring the attendance of witnesses, and for the examination and punishment of witnesses in suits before Civil Courts, shall be of equal force and effect in respect of any person summoned to appear as a witness under the provisions of this Act.

Power to trustees to examine trader, &c., on oath.

11. If

11. If in the course of their investigation it shall appear to the trustees that such trader 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 or purposely withheld the production of any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or kept or caused to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified any such book, paper or writing, or that such trader 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 concealed any debt due to or from the said trader or made away with, charged, mortgaged or concealed any part of his property of what kind soever, the trustees shall forthwith report the same to the Court, which shall enquire into the same in like manner and with like powers as a Commissioner of the Court for the Relief of Insolvent Debtors in Bombay; and upon such offence being proved against such trader to the satisfaction of the Court, it shall be lawful for the Court to adjudge that the offender shall be punished with rigorous or simple imprisonment, as the Court shall direct, for a term which may extend to two years, and by warrant under the seal of the Court to order the offender to be arrested and committed to prison and there to be detained accordingly.

12. If in the course of their investigation, it shall appear to the trustees that such trader has contracted any of his debts fraudulently or by means of breach of trust or by means of false pretences or without having any reasonable or probable expectation at the time when contracted of paying the same, or shall have fraudulently or by means of false pretences obtained the forbearance of any of his debts by any of his creditors, or if it shall appear that such trader's whole debts so greatly exceeded his means of providing for the payment thereof during the time when the same were in the course of being contracted (reference being had to his actual and expected property) as to show gross misconduct in contracting the same, the trustees shall forthwith report the same to the Court, which shall thereupon enquire into the same in like manner and with like powers as a Commissioner of the Court for the Relief of Insolvent Debtors in Bombay; and upon such offence being proved against such trader to the satisfaction of the Court, it shall be lawful for the Court to adjudge that the offender be committed to and detained in the gaol at Bombay, on the debtors' side thereof, for such term not exceeding two years as the Court shall direct.

13. If upon any decree voluntarily suffered by such trader, being insolvent, to any person with intent to give such person a preference over other creditors of such trader, any attachment or execution is issued against such trader by virtue whereof the estate and the effects

of

Penalty on trader fraudulently concealing effects or falsifying or destroying books, &c.

Penalty on trader fraudulently or dishonestly contracting debt.

Executions upon certain decrees within three months of first order to be void.

of such trader or any of them are attached or taken in execution at any time within three months next before the filing of such order as herein mentioned, such attachment or execution shall be void in favour of the trustees appointed by virtue of this Act as against the attaching or execution creditor, whether the same has been completely executed or not, and it shall be lawful for such trustees to recover back from such creditor the estate or effects of such trader so attached or taken in execution or the proceeds thereof as the case may be; Provided always that such creditor shall, if the attachment or execution would have been valid but for this provision, be entitled to retain or levy, as the case may be, his costs of suit and of such attachment or execution.

14. If any trader whose estate shall be vested in trustees under the provisions of this Act shall, when in insolvent circumstances, and within two months before the filing of such order as herein first mentioned, voluntarily convey, assign, transfer, charge or make over any property moveable or immoveable, or any security for money, bond, bill, note, money, goods or effects whatsoever to any person or upon any trust, every such conveyance, assignment, transfer, charge or making over shall be deemed and is hereby declared to be fraudulent and void as against such trustees.

Fraudulent conveyances made by trader within two months before first order to be void.

15. The Court shall have jurisdiction at any time during the liquidation of any trader's estate under this Act, to entertain any application of the said trader or of any person claiming to be a creditor, respecting the disclosure, distribution, inspection, conduct, management or liquidation of such trader's estate or affairs, or any act or thing relating thereto, or generally for the decision of any dispute or question that may arise between the trustees and such trader, or any creditor, debtor or claimant.

Power of Court to entertain applications of trader or any creditor respecting trader's estate.

16. The Court shall have power to remove any trustees appointed under this Act, and to appoint others in their stead, and to fill up any vacancy occasioned by the death, insolvency, resignation or departure from India of any trustee, or by any other sufficient cause; and the Court shall upon application to it in that behalf declare whether any act hereby required or authorized to be done by the trustees may be done by all or one or more of such trustees.

Power of Court to remove and appoint trustees.

17. It shall be lawful for the Court for the Relief of Insolvent Debtors at Bombay, upon application by or on behalf of a majority in number and unsecured value of the creditors of any insolvent debtor who has filed his petition in that Court, to order that the estate of such insolvent shall be wound up by trustees

Power of Insolvent Court to order insolvent estates to be wound up under this Act.

tees under the provisions of this Act, upon such terms as to costs and remuneration to the Official Assignee, and with such directions as shall appear to be necessary and just.

18. It shall be lawful in any case in which the estate of any trader has been vested in trustees under a deed of assignment before the passing of this Act, for such trustees to apply to the Court for liberty to wind up such estate under the provisions of this Act.

Liberty to trustees under deed of assignment to apply that estate may be wound up under this Act.

19. In any case in which the estate of a trader shall be vested in trustees under the provisions of this Act, it shall be lawful for the trustees, with the sanction of the Court, to make to such trader out of the funds in their hands a reasonable monthly allowance for maintenance.

Liberty to trustees to allow maintenance to trader.

20. There shall be paid to the trustees such salary or remuneration by way of percentage or otherwise as the Court shall direct; and all costs, charges and expenses properly incurred in winding up the estate, including the remuneration of the trustees and the maintenance of the trader, shall be payable out of the assets of the trader in priority to all other claims.

Remuneration of trustees.

21. During the liquidation of the estate the trustees shall file half-yearly accounts of the progress of such liquidation in the office of the Prothonotary of the Court; and as soon as the affairs of the trader are fully liquidated and the estate distributed, the trustees shall make up an account showing the manner in which such liquidation has been effected and the property of the trader disposed of, and such account, with the vouchers thereof, shall be filed in Court. All accounts so filed shall be open at all reasonable times to the inspection of creditors, and copies thereof shall be granted on payment of such fees as may from time to time be fixed by the Court.

Trustees to file accounts half-yearly.

22. The trustees shall give notice of the filing of such final account with its vouchers by advertisement of even date in the Government Gazette and in two of the daily English newspapers and in two of the vernacular newspapers published in Bombay; and if no order to the contrary shall be made by the Court within three months after the date of the publication of such advertisement, the said estate shall be deemed to have been fully liquidated and wound up, and the trustees shall thereupon be deemed to be fully released and discharged from all liability in respect of the said estate and the liquidation thereof.

Estate when to be deemed fully wound up.

23. After

23. After the filing of such final account as aforesaid and upon the said trustees certifying to the Court under their hands that the said trader has assigned, conveyed or made over to them all his property, effects and securities of every nature and kind whatsoever, and all books of account, accounts, vouchers, papers and documents relating to his estate, and also that he has given all reasonable assistance to the trustees in and towards realizing and winding up his estate, it shall be lawful for the Court upon the application of such trader, and upon such notice as it shall direct, to grant to such trader an order of discharge; Provided always that if such certificate as aforesaid shall have been refused to any trader by the trustees, such trader may nevertheless apply to the Court for such order of discharge and the Court shall have power, upon such notice to the trustees as it shall direct, to grant such trader an order of discharge if it shall think fit.

Trustees may grant certificate to trader for order of discharge.

24. Such order of discharge shall operate to discharge the trader and all property and effects acquired by him subsequent to the filing of the order herein first mentioned, from all debts, claims or demands in respect of the transactions included in the account filed by the trustees, and no suit shall thereafter be maintainable against the said trader, nor shall such after-acquired property and effects be liable to be attached or taken in execution, in or under the order of any Court in British India, in respect of such transactions.

Effect of order of discharge.

25. Any application directed by this Act to be made to the Court shall be made to a Judge in Chambers, who shall have power to make any order necessary to be made under this Act, or to refer such application to a full Court; and such Court or Judge is hereby empowered to make any order in respect of the premises, which could be made by a Commissioner of the Court for the Relief of Insolvent Debtors under 11 and 12 Vic., cap. 21.

Applications to be made to Judge in Chambers.

26. The operation of this Act shall be limited to estates in which the admitted liabilities are not less than five lakhs of Rupees.

Limitation of Act.

27. This Act shall come into operation on the first day of October 1865 and shall remain in force until the thirtieth day of September 1867. Provided that as to such estates (if any) as shall, on or before such day, have been brought under the operation of this Act, and of which the winding up under its provisions shall not have been completed, this Act shall remain in force until such estates shall have been wound up as aforesaid.

Commencement of Act.