1(4-4)

INSOLVENCY LAW REVIEW COMMITTEE

THIRTYFOURTH MEETING

Meeting to be held in the Conference Room, 2-14 Bunhill Row, on Thursday, 18 October 1979 at 10.00 am.

A G E N D A

1 Minutes of the meeting on 19 September.

2 Matters arising.

3 Secretary's report.

* 4 Interim Report.

5 Any other business.

6 Agenda for the next meeting (21 November).

* See also Briefs which have been circulated.

ILRC 98 Grounds for petitions

Bgy Offences ILRC 94 §§61-63

Immed. Upgrade ILRC 97

Penny DAO.

10 - 4

Minutes first 10 - 10.30

Trevor Traylor

T H TRAYLOR
Secretary

PRIVATE AND CONFIDENTIAL

INSOLVENCY LAW REVIEW COMMITTEE

Note to Members

Enclosed are the minutes of the meeting which took place on 21 May and for those who were unable to attend, comments on the proposed consultative document from Alfred, David and Ritchie, together with a Note of the combined meeting of Working Groups 1 and 2 held the previous day.

Also enclosed is a copy of a letter from John Hunter which he has asked me to circulate.

T H TRAYLOR
Secretary
29.5.80

INSOLVENCY LAW REVIEW

Minutes of the Forty-first Meeting of the Review Committee on 21 May 1980.

Present:	MVS Hunter	(in the Chair)
	PGH Avis	
	J S Copp	
	AIF Goldman	
	J M Hunter	
	D McNab	
	P J Millett	
	T R Penny	
	C A Taylor	
	E I Walker-Arnott	
	T H Traylor	(Secretary)
	E L Reeves	(Assistant Secretary)
In attendance:	J R Endersby	
	D Graham	
	R B Jack	
	G A Weiss	

1 The Committee met at 10.00 am. With regard to the minutes of the fortieth meeting held on 16 April, the use of the word ceiling in para 10 was queried; it was noted that this referred to specifying the maximum sum for which the security is valid (ILRC 105, paras 11 and 13). The minutes were then agreed and signed.

MATTERS ARISING

2 The Secretary said that Mr Avis had raised a point on the last sentence of para 26 of the minutes. It was agreed that the matter should be re-opened at the next meeting.

3 The Secretary said further that Mr Avis, in connection with para 32, had raised the problem of safeguarding any diminution in values which could arise with a deferment of realisation. It was noted that deferment for 12 months in the case of a fixed charge would not be automatic.

4 Mr Muir Hunter thought that under the American system where the Court could inhibit the enforcement of fixed charges, the Court took into account damage to the creditor and could compensate him. It was agreed that this should be discussed together with Mr Avis' point (para 2 above).

SECRETARY'S REPORT

5 The Secretary said that apologies for absence had been received from the Chairman and Mr Drain.

6 Papers circulated since the last meeting had been ILRC 113 to 118, consultees' submissions C198 to 201 and comments by members on items on the agenda. Papers placed before the meeting were an extr

from Hansard, and extracts from the Accountant and Accountancy Age regarding the disqualification of an individual.

DEPARTMENT'S PROPOSED CONSULTATIVE DOCUMENT

7 The Committee resolved that the record of its discussions on this matter should be treated as confidential to members and to co-opted members. **

NEXT MEETING

8 It was agreed that the Committee would meet next at 10.00 am on Friday, 13 June.

** Issued to members and co-opted members as Appendices A and B.

POINTS FOR USE BY THE COMMITTEE'S REPRESENTATIVES

1 Terms of reference - do they continue or will they be changed? (Note: these include examination of the possibility of formulating a comprehensive system and the extent to which existing procedures might be harmonised and integrated).

2 Harmonisation not only between bankruptcy and winding-up, but with EEC.

3 The OR apparently to be retained in small liquidations but not in bankruptcy whether serious or not (eg. Joe Bloggs Ltd but not Stern).

4 The need for the OR to investigate serious bankruptcy cases.

5 The dichotomy between the Department's evidence in DT1 and the proposed document.

6 The public interest point is ignored.

7 The views of the Committee's consultees ignored.

8 The suggestion that the creditor is interested in money and not investigation - but until there is investigation it may not be possible to say where the assets are.

9 Government petitions - the cost will now fall on other departments.

10 The proposals will not permit the ultimate sanction (bankruptcy) against the delinquent director.

11 No provision is made for the consumer debtor.

12 No provision is made for the bona fide debtor seeking relief from harassment by his creditors.

13 Who investigates "no asset" cases?

14 Criminal bankruptcy (Note Department's evidence in DT5).

15 There will be no sanction of bankruptcy against the non-co-operative debtor under lesser insolvency procedures.

16 What does the Department have in mind as regards "suitably qualified persons"? A licensing system?

17 The real danger of repetition of the pre-1883 abuses (eg. the tame trustee wrongly certifying that there are no assets).

18 The cost to small creditors.

19 Although it is argued that investigation has led to a minimal number of prosecutions, these are under the Bankruptcy Act and more serious cases are prosecuted under other heads.

20 More detailed information about the reduction of 570 in manpower and saving of £3m p.a (Part A para 11).

21 What increases will there be in HQ staff and at what level resulting from the supervisory functions referred to in Part A para 9?

PRIVATE AND CONFIDENTIAL

THE BANKRUPTCY AND COMPANIES OFFICE
ROYAL COURTS OF JUSTICE
CHICHESTER STREET
BELFAST BT1 3JF
Telephone 35111 ext. 237

23 May 1980

Dear Trevor,

As you know, I will be unable to attend the special meeting arranged for 13 June.

I understand that at this meeting further consideration may have to be given to what action, if any, the committee should take if, in spite of our representations, the Government proceed to publish the proposed C.D.

We are all indignant that the Secretary of State should consider embarking on a new consultation on an important area of the remit given by his predecessor before he has received our detailed proposals and should dismiss our interim report (which, we had been informed, the responsible Deputy Secretary of his Department had commended) so cavalierly. However, we must be careful not to allow this indignation to cloud our judgment as to what action on our part is best calculated to advance the general public interest.

I felt that the most forceful argument put forward at our meeting on 21 May in favour of resignation was that this would leave members free to marshal forces against the Government's proposals. We would, however, be equally free after our final report had been presented and at that point of time would our views not carry very much more conviction ?

I am not convinced that the time-table envisaged by the Department, even if it is not set back by the delay already achieved by the good work of our delegation, will not enable our final report to be completed in time to be available as ammunition to those opposed to the Government's proposals.

In spite of the diversion of effort which the present exercise is causing, I think we are all determined to achieve our latest target date of March 1981. Although the time stated in the draft C.D. for comments (even if extended from 30 September next as it may now have to be) will have expired well before that date, there will still be several months before legislation is presented to parliament. Should the Secretary of State delay publication of our final report I have no doubt that effective parliamentary pressure could be brought to bear to ensure publication.

If we do not complete our work by presenting a final report, not only will the years of hard labour of our own members, consultants, panelists and secretariat have been largely wasted, but the immense efforts put in to assisting us by our consultees (particularly by the committees of professional and commercial bodies) may also be unrewarded. No doubt the written evidence will be handed over to the Insolvency Service to study, but I think our consultees would find this a poor substitute for the knowledge that we had considered their views and based our findings on them. Only a small part of the evidence has any bearing on the question of the retention of the OR in bankruptcy and our consultees might feel that we were

926

not justified in allowing our strong views on the manner in which the Department has treated us in relation to this to lead us to abdicate our task in relation to all the other important topics on which so much work has been done.

If our final report is available before the Government's bill is published, will it not be much more difficult for the Secretary of State to justify to parliament embarking on a lengthy and controversial piece of legislation with the sole object of reducing numbers in the Insolvency Service by withdrawing the O.R. from bankruptcy against our strong recommendations and without including at the same time the sort of comprehensive insolvency legislation which the implementation of any substantial part of our final report would require and, in particular, without any attempt to harmonise personal and corporate insolvency procedures ? Might we not be making it easier for the Government to implement their very limited proposals if we do not proceed with our final report ?

I am certainly in favour of the Secretary of State being informed of our strong feelings against publication of the proposed C.D. and would not object to his being left in uncertaintly as to whether the committee would be prepared to continue if this were done, but I would prefer to go no further than this at this stage.

If publication of the proposed C.D. goes ahead, I am of opinion that we will best serve the public interest by adopting a dignified response, getting on with completing our work and hoping that, as envisaged by Muir, the C.D. will be subjected to ridicule in responsible quarters.

Yours sincerely,

John

Commander T.H. Traylor M.B.E.,
Secretary, Insolvency Law Review Committee,
Department of Trade,
2-14 Bunhill Row,
LONDON EC1Y 8LL

46th Mtg
25.9.80

INSOLVENCY LAW REVIEW

Minutes of the Fortysixth Meeting of the Review Committee on 25 September 1980.

Present:	Sir Kenneth Cork	(Chairman)
	PGH Avis	
	J S Copp	
	AIF Goldman	
	J M Hunter	
	D McNab	
	T R Penny	
	C A Taylor	
	E I Walker-Arnott	
	T H Traylor	(Secretary)
	E L Reeves	(Assistant Secretary)
In attendance:	G A Weiss	

1 The Committee met at 10.00am. The minutes of the fortyfifth meeting held on 20 August 1980 were agreed and signed.

MATTERS ARISING

2 With regard to paras 16-35 of the minutes of the fortyfifth meeting (Group trading), Mr McNab asked for two points which had been in his written comments on the paper but had not been discussed, to be put on record, viz:-

(i) Holding or parent companies invest in subsidiaries in order to make a profit for their shareholders, and

(ii) Parent or holding companies can and often do appoint all the directors or any number they may decide upon, where they control 51% or more of the subsidiary's capital.

3 The Chairman said that there was great demand for a holding company to be made responsible. His view was that the holding company should be responsible for the debts of the subsidiary but if the holding company becomes insolvent those debts should be deferred to creditors of the holding company.

4 Mr John Hunter had suggested that s.315B of the New Zealand Act would be useful - this gave power to the Court to order the winding-up together of two or more related companies as if they were one company. The point had been put to Mr Millett who had replied that he did not think it necessary. There was machinery under s.206 (CA 1948) and the Court had repeatedly refused to sanction an arrangement except in accordance with s.206, (eg. merely on the joint application of the two liquidators), on the ground that the Court ought to know what the views of creditors were and that dissenting creditors ought to have an opportunity to oppose the application. The Chairman suggested that attention should be drawn to the present power and that it should be said that this was a useful tool.

5 With regard to para 2 of the minutes of the fortyfifth meeting, the Secretary said that he had not yet had a note from Mr Graham.

6 As to para 7 of the minutes, a reply as agreed with the Chairman had been sent to the Department.

7 On the question of the matrimonial home and charging orders Mr Taylor asked that a note should be made in the Report of the recent judgment in the High Court in National Westminster Bank Ltd v Stockton.

ORAL EVIDENCE

8 The Secretary said that it had now been agreed that oral evidence would be taken from the CCAB in the forenoon of 24 November. The Inland Revenue and the Department of Employment had accepted 21 October and 22 October had been offered to Dept of Trade. The combined lawyers' delegation had been offered 22 October, 10 November and 12 November and hopefully the other 2 revenue departments would also accept one of the two latter dates. The Secretary asked again if members would put to him suggested questions and points to be raised.

SECRETARY'S REPORT

9 The Secretary said that apologies for absence had been received from Mr Drain, Mr Endersby, Mr Jack, Mr Muir Hunter and Mr Millett.

10 Papers circulated since the last meeting had been ILRC 133-136, further written submissions (C217-222), briefs for items on the agenda, the Bankruptcy General Report 1979, two extracts from the Accountant, two extracts from the Financial Times, the copy of the letter from PAR Brown of 28 August about oral evidence and the letter to consultees (see para 14 of the minutes of the fortyfifth meeting) which had been sent out in two batches; the first batch had sent promising replies.

11 Meetings fixed were Working Group 1 on 29 September and 13 October, Working Group 2 on 9 October and the main Committee on 15 October.

12 The Committee then fixed dates for further main Committee meetings in 1981:-

Wednesday 14 January
Wednesday 11 February
Monday 23 March

It was recognised that additional meetings to those already fixed might be necessary.

13 The Secretary said that all members except Mr Muir Hunter, Mr Taylor and Mr Walker-Arnott had now provided comments on the draft chapter on preferential debts prepared by Mr Millett. The comments were being collated and would be sent to Mr Millett for consideration.

RECEIVERSHIPS UNDER FLOATING CHARGES

14 The Committee had before it ILRC 73 (paras 94-108) a brief by the Secretary and comments by Mr Avis.

15 Paras 94-95 - disposal of interest in property. It was agreed that it would be useful, where a creditor was being obstructive, for the receiver to be able to apply to the Court for authority to sell or dispose of the property free of encumbrance.

16 Paras 96-97 - audit of receiver's accounts. The Committee confirmed their provisional view that the Department should have discretionary power to audit, but this should not be limited as suggested by the Accountants' Panel. The costs would fall on the estate.

17 Paras 98-101 - remuneration. Some clauses like those in the Solicitors' Remuneration Order might be useful if set out as guidelines in the Rules. The recommendation regarding s.18 of the Scots Act was accepted.

18 Paras 102-103 - cessation of a receivership. The Committee agreed that prior to ceasing to act a receiver should send to all creditors a summary of his receipts and payments for the whole period of his administration, with his comments; there should also be provision for the receiver to apply to the Court to dispense with this duty in whole or in part.

19 S.22 of the Scots Act provided that the receiver could only be removed by the Court. The Committee took the view that the receiver should only be removed "with the sanction of the Court"; this followed from the proposal that the receiver had a duty to everybody.

20 As regards para 103 (refloating of a floating charge), Mr Walker-Arnott preferred to leave matters as they are. Mr Taylor wanted to see some sanction to compel the appointment of a new receiver. It was left that if no receiver was appointed and there was no liquidator, an application could be made to the Court for the appointment of an administrator.

21 Paras 104-105 - liquidation. The Committee agreed with the Panel's suggestion which would enable the OR or liquidator to require any person to provide information or to produce books and papers concerning the company's affairs. As to a receiver becoming liquidator, the Panel had suggested that it could be of benefit for him to be a joint liquidator, but he should not be a sole liquidator in any type of liquidation without the sanction of the Court. The Committee accepted this but noted the CCAB's attitude against being a joint liquidator - the Report would refer to this as being thought to be wrong.

22 Para 106 - information in balance sheets and on the company's file. It was felt that these were matters outside insolvency and it was agreed that reference should be made in the Report to the suggestions which had been made in written evidence, suggesting that these should be considered by the appropriate department.

23 Paras 107-108 - codification similar to the Scots Act. The Committee accepted the proposals in para 107(a) and (b), but (c) led to discussion. It was recognised that there was criticism of precipitate action by some debenture-holders in appointing receivers, but on the other hand giving notice or warning led to the danger of assets disappearing before the appointment, particularly stocks. By

a majority the Committee decided that notice should be given at the registered office of the company (ie. a demand for payment by the debenture-holder) and that 24 hours later a receiver could be appointed. This should apply even where the directors asked for a receiver to be appointed. The fact that this was only a majority decision would be noted in the Report.

24 Thanks were expressed to the Accountants' Panel for their report.

COMPULSORY INSOLVENT PROCEDURES FOR INDIVIDUAL DEBTORS

25 The Committee had before it ILRC 133-134 and comments by Mr Avis, Mr Copp, Mr Goldman and Mr John Hunter.

26 The Secretary pointed out that some members disliked the term "Liquidation of Assets Order"; the term had been chosen because it related closely to the term used in the EEC for a similar procedure. Whatever term was used in the Report however, ultimately it would rest with the department to choose a name if the procedure were adopted. Mr John Hunter suggested the use instead of "Insolvency Order" but Mr Goldman thought that this would be equated with a Receiving Order. Mr Walker-Arnott pointed out that "liquidation of assets" would also deal with surplus income. On balance, for the time being, the Committee were in favour of using the term "liquidation of assets". As to what the debtor should be called, it was thought that the Report could stress the difference from full bankruptcy by referring to "the insolvent" and "the bankrupt" where appropriate.

27 The Committee then dealt with the comments by members on ILRC 133.

28 Para 3(c). Mr John Hunter thought that in a second or subsequent insolvency the debtor should not automatically be made "bankrupt" but that the Court should have discretion. It was agreed that the circumstances for an earlier insolvency and the latest insolvency should be taken into account. It was agreed that unless the Registrar found mitigating circumstances, "full bankruptcy" should follow.

29 Para 6. Mr Avis pointed out that the last sentence of this para might have to be rephrased depending on the outcome of the Green Paper.

30 Para 7. Mr John Hunter had made a detailed suggestion regarding the use of "petition" for inclusion in the Report. This was accepted.

31 Para 9. Mr Avis had suggested that "liabilities" should be expanded to include both current and contingent liabilities. Members thought that these would be included anyway and the wording was left unchanged. Line 7 was amended to read "He should give any proposals..." as the debtor might not be in a position to make a specific proposal.

32 Para 12. It was agreed that in the case of a creditor applicant attendance should be by the debtor and the applicant or his legal representative. Mr John Hunter had recommended a similar provision to that applying in Australia where the affidavit verifying the petition was sufficient evidence. Mr Penny wondered why an affidavit was needed at all, but supported Mr John Hunter.

33 Para 13. A footnote would be inserted after (a) referring to the Chapter on the DAO. Mr Penny said that it might have to be considered, when initiation had finally been settled, whether at this stage it should be possible to adjourn for payment in full - this should not be overlooked.

34 Para 16. Line 3 was amended to read "...paid the petitioning creditor's debt subsequent to the application".

35 Para 18. It would be made clear that if the debtor does not attend the hearing or supply the Court with the necessary details, a Protection Order would be made, or if the debtor is the applicant the application would be dismissed.

36 Para 19. Doubt was expressed as to whether it was right to say that the OR can sell before an adjudication order is made. Mr Taylor said that the OR could sell if he had the debtor's agreement.

37 Para 20. Mr John Hunter's revised para 20 about Northern Ireland was accepted.

38 Para 21 et seq. It would be made clear where reference was being made to the OR as provisional trustee, by saying "Official Receiver and provisional trustee".

39 Para 22. It was noted that this said "except in the ordinary course of business" which seemed to conflict with para 24. This would be modified to say "with the leave of the Court".

40 Para 24. Mr Taylor pointed out that the OR normally applies to the Court to carry on a business; the Court may require an indemnity to be obtained.

41 Paras 30-39. Mr Copp had asked what would happen if the debtor had applied, and the creditors had failed to nominate a trustee. The answer was in para 35.

42 Para 32. Mr John Hunter had suggested that the application should not be dismissed if a DAO was made; the DAO should incorporate a rescission of the Protection Order. This was accepted.

43 Para 33. Mr John Hunter had the same point here.

44 Para 35. The final sentence was amended to read "...that an order would not be made unless the circumstances were such as would justify full bankruptcy".

45 Para 41(a). A consequential amendment was made, as suggested by Mr John Hunter, following the changes in paras 32 and 33.

46 Para 45. There was discussion as to whether it would be right for the trustee to report to the Court, and it was suggested that his report should merely be filed with the Court. Mr Penny said that he had envisaged a ten minute hearing by the Registrar in those few cases which were not completed in a year. It was decided that the trustee should report to the creditors and this would be filed in the Court - the onus would be then on the creditors to take action if they thought fit.

47 Para 46 "lesser procedures" was amended to "other insolvency procedures".

48 Para 52. Mr Copp had suggested that a DAO should be made at the same time. The arguments against this were that it was undesirable for two people to deal with the insolvency and under liquidation of assets there would be preferences.

49 Para 63. Mr Copp had expressed disquiet about self-incrimination. It was pointed out that incriminating questions could still be disallowed in chambers; a note to this effect would be included in the Report. The second sentence was amended to read "This can cause delay in the realisation of assets....".

50 Para 72. It was noted that the Senate of the Inns of Court and the Bar and the Law Society (C168) had made a suggestion about legal professional privilege. Mr Walker-Arnott found this unacceptable and it was agreed that they should be questioned about this when they come to give oral evidence.

51 Paras 76-93. There was a lengthy discussion about discharge. Some members had alternative proposals to those put forward in the paper. Mr Goldman would prefer automatic discharge from liquidation of assets after 12 months and from bankruptcy after 5 years. Mr John Hunter accepted that a bankrupt should have to apply but was in favour of automatic discharge in liquidation of assets, conditional on his carrying out what the Court required. Mr Penny pointed out that under a DAO the debtor was subject to disabilities. The SIO was equivalent to a DAO, and if the debtor was discharged before a SIO had been fully paid, what could be done?

52 The Committee agreed that in the case of liquidation of assets the debtor should be automatically discharged at the end of 12 months from the date of the liquidation of assets order, conditional on payments under any SIO and on any other requirement of the Court. The trustee should have power to apply to the Court for deferment of the debtor's discharge.

53 In the case of bankruptcy there should be an automatic review by the Court after 5 years from the date of the adjudication, for the purpose of determing whether the bankrupt should be discharged. It was thought that in practice, unless the trustee put in a caveat, the bankrupt would be discharged. Nothing should prevent a bankrupt from applying for his discharge at an earlier date, but not within 12 months of the adjudication.

54 Para 96. It was agreed that the words "from the requirement" should be inserted after "resulted" in line 2.

INSOLVENCY COURTS

55 The Committee had before it ILRC 132 and comments by Mr Avis, Mr Graham and Mr John Hunter.

56 Mr Penny said, in reply to questions, that "licensed insolvency practitioners" meant authorised practitioners. Everything would be dealt with by Registrars and the only judge would be in the Insolvency Division of the High Court. There had to be a balance between Registrars travelling to local areas to deal with one case and debtors being required to travel.

57 The Chairman suggested that mention should be made of the hope that cases would be dealt with as locally as possible. Mr Muir Hunter and Mr Millett should be asked for their views on the paper and subject to these, the paper should be accepted.

ANY OTHER BUSINESS

58 The Chairman suggested ways in which production of the Final Report could be speeded up. He proposed that the Secretary should concentrate on producing draft chapters and that the Assistant Secretary should take over the day-to-day work of the Committee. This was agreed.

59 It was further proposed that Mr Graham should be invited to work with the Secretary on the preparation of the report and that other members could be called upon as necessary. This too was accepted.

60 The Chairman said that he would chair a sub-committee to see that this work was done and Mr Goldman was appointed as deputy chairman of the sub-committee. Mr Weiss would assist.

61 The Chairman hoped that time would be set aside at future meetings to clear Chapters and he hoped further that his sub-committee could produce a work timetable before the next meeting.

62 The Secretary said that the following subjects, at least, still had to be discussed:-

Winding-up Generally (coming from Accountants' Panel)
Liquidator's Powers and Duties (coming from Accountants' Panel)
Sub-contractors in the construction industry (on which there was a great deal of written evidence)
Administration of Deceased Insolvent's Estates (coming from Mr Avis)
S.206, etc (coming from Mr Walker-Arnott)
Delinquent Directors (coming from Legal Panel)
Trust Property (coming from Legal Panel)
Accountability of a Receiver (coming from Legal Panel)
Distress and Executions (Working Group 1)
Harmonisation (Working Group 1)
Property of individual debtors divisable amongst creditors (Working Group 2)
Disabilities and Offences (Working Group 2)
Disclaimer in bankruptcy (Working Group 2)
Miscellaneous bankruptcy matters (Working Group 2)
OR's Service (which it had been agreed would be discussed after the WG papers had been considered)
Enforcement Procedures
Fines (coming from Mr Graham)

Mr Weiss added that it would be necessary to discuss residual powers of directors in the course of a receivership and Mr Taylor suggested that there should be an additional ground for winding-up available to shareholders or directors, ie. that the capital of the company had been lost - the latter would be discussed when the Accountants' Panel report was put before the Committee.

NEXT MEETING

63 It was agreed that the Committee would meet next at 10.00 am on Wednesday 15 October, at Bunhill Row.

ILRC 46TH MEETING

Item 4 (Receiverships)

In reissuing the brief on the remainder of ILRC 73, I am sorry to say that Peter Avis's comments were not mentioned. These had been circulated for a previous meeting, but are recirculated for convenience.

E L REEVES
Assistant Secretary
19 September 1980

Midland Bank Limited

Poultry London EC2P 2BX

P G H Avis
Assistant General Manager

Private and Confidential

Cmdr. T.H. Traylor, M.B.E., C.de G.RN,
Department of Trade,
Insolvency Service,
2-14 Bunhill Row,
London EC1Y 8LL.

6th August 1980

Dear Tim,

I have a couple of thoughts on Item No. 7 of the Agenda for the 45th Meeting as follows:-

Receiverships (ILRC 73) Brief for Item 10 (of 46th Meeting).

Para: 2. I have no objections to the suggestion of the adaptation of the provisions in Section 21 of the Scots Act, but I feel it might be necessary to write in certain precautions to protect the rights of a mortgagee. Furthermore, if in the event of a receiver obtaining permission of the Court to a sale he, the receiver, must account to the mortgagee in the proper order of priority to the extent of the mortgagee's interest in the property.

Para: 6. In a majority of cases I consider that the Department should pay for the cost of a receivership audit, but if in the event the accounts so audited were found wanting in any degree then the Department ought to be able to recover the whole or part of the cost from the receiver, depending upon the outcome.

Para: 9. I agree that Section 22 of the Scots Act would be a sensible provision providing the debenture holder retains the right to remove the receiver should this action become necessary.

Para: 14. I am inclined to the view that it would not always be practicable to limit the period under 13(c) to 24 hours. There could be problems, particularly with the communication system as it is at the moment, and I would prefer to see the limit extended to 7 days, on the understanding, of course, that the debenture holder can appoint his receiver after demand for payment, and without payment having been made, within a matter of hours if he so wishes.

995

Registered in England (No. 14259)
Registered Office Poultry London EC2P 2BX

INSOLVENCY LAW REVIEW COMMITTEE

FORTYSEVENTH MEETING

Meeting to be held in the Conference Room, 2-14 Bunhill Row, on Wednesday 15 October at 10.00 am.

A G E N D A

1 Minutes of the meeting on 25 September.

2 Matters arising.

3 Secretary's Report.

4 Disqualification of directors of insolvent companies (ILRC 135 and 136).

5 Winding-up Generally (ILRC 137 and 138).

6 Construction Industry (ILRC 139).

7 Consideration of members' comments on draft Chapter "Preferential Debts".

8 Any other business.

9 Agenda for next meeting (20 November).

E L Reeves

E L REEVES
7 October 1980

5

ILRC - 49th - 50th Mtgs

Brief for Item 5 (Property of an Insolvent Debtor Divisible among his Creditors

1 Comments by Ritchie and Peter Avis are attached.

2 Duncan wishes to extend and expand on the comments of Ritchie, differing from him in detail as opposed to principle.

3 Chris, referring to para 34 of ILRC 146 which supports Blagden para 108, feels that "incurred" would be better expressed as "outstanding at the date of intervention". He also suggests a drafting change in the last line of para 48 where reference is to the spouse, and not solely to the wife.

4 Edward agrees with ILRC 146

5 John Hunter thinks that para 50 should also have referred to ILRC 87. He has asked that extracts from ILRC 87, 90 and the minutes of the 35th meeting should be circulated for ease of reference - these are attached.

E L REEVES
11 December 1980

Income of property to spouse
Hus. not at arm's length.