Thursday,
6th May, 1886

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

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Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 6th May, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C., R.A.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

Colonel the Hon'ble W. G. Davies, C.S.I.

INDIAN BANKRUPTCY BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India. He said:—

"Papers relating to this measure have now been before the public for the greater part of a year, and I do not propose to occupy the time of the Council by recapitulating in detail matters which have been explained in documents that have been published and circulated for general information.

"In the Statement of Objects and Reasoas accompanying the draft Indian Bankruptcy Bill which the Government of India published last summer, it was remarked that the general amendment of the law of insolvency and bankruptcy in India had of late years been frequently pressed upon the attention of the Government of India.

"It was pointed out that there are at present two main bodies of insolvency law in force in British India—first, the English Statute of 1848, which, roughly speaking, constitutes the insolvency law for the three Presidency-towns and for the towns of Rangoon, Maulmain, Akyab and Bassein; and secondly, Chapter XX of the Civil Procedure Code, which constitutes the nearest approximation

to an insolvency law for the Mufassal generally. It was added that besides these two main bodies of law there was a special insolvency law for the Punjab, and there were several special Acts passed for the relief of indebted landowners in different parts of the country.

"The Statement then referred to the steps which had been taken by Sir A. Hobhouse and others for amending Chapter XX of the Civil Procedure Code, to the general Insolvency Bill which was introduced in 1870 by Sir James Stephen, to the short amending Bill introduced by Mr. Pitt-Kennedy in 1881, and to the circumstances under which both these Bills had been dropped.

"After alluding to the special difficulties which had been experienced in working the existing insolvency law at Bombay and to the repeated requests for an amendment of the law which had reached the Government of India from that city, the Statement went on to say, in a paragraph which I will read in full,—

'9. The insolvency law of the Presidency-towns is admittedly cumbrous, defective and out of date, and in some points of detail is, as has been shown, urgently in need of amendment. The proposals for its revision which have hitherto been submitted to the legislature have been objected to, not so much on the ground that they were undesirable, as on the ground that they were insufficient, and that, while it was desirable to re-cast the whole law and bring it into conformity with English law, it was expedient to postpone legislation for this purpose while proposals involving important amendments of the English law itself were under consideration. This objection has recently been removed by the passing of the English Bankruptcy Act of 1883. That Act may not be perfect; but at least it embodies the accumulated experience of the 35 years which have elapsed since the passing of the Indian Insolvency Act; and in commercial law perfection of detail is less important than uniformity of principle. It is eminently desirable that the circumstances under which a debtor may be declared insolvent and under which he may obtain his discharge should be, as far as possible, the same in London and Calcutta.'

"The conclusion to which the Government of India came on these premises was that the opportunity should now be taken of repealing the Indian Insolvency Act of 1848 and substituting for it a new Act which should, so far as possible, conform in general principles, in language and in arrangement to the latest English Act, but should be freely adapted in details to Indian circumstances. And the draft Bill which was circulated for opinion last summer was framed in accordance with this view.

"Two difficult questions at once suggested themselves in connection with this draft, and are discussed in the Statement of Objects and Reasons which accompanied it.

"The first question was whether the new law should be applied to the whole of British India or only to specified towns. With reference to this question my opinion was, and is, that although there is much to be said in favour of having one and only one insolvency law for the whole of India, yet the balance of advantage is in favour of leaving the Mufassal generally under the Civil Procedure Code, and of confining the operation of the new Act to those towns which are at present under the operation of the Insolvency Act, power being reserved to bring other towns within the same category. The Bill which I am asking leave to introduce will therefore have this restricted operation, but I propose to insert in it provisions which will enable the Courts to deal with up-country debtors in certain cases.

"The second question was in connection with the powers of the Governor General in Council. The present Indian Insolvency Act is an Act of the Imperial Parliament, and as such has operation beyond the limits of British India. For instance, a vesting order made under it vests in the assignee by its direct operation all the real and personal estate and effects of the insolvent in whatever part of the British dominions they may be situate or accrue. The Indian legislature cannot give its own Acts any such extensive operation, and this limitation of our powers has up to this time proved a serious stumbling-block in the way of Indian bankruptcy legislation. I think it is clear that we cannot pass a satisfactory Bankruptcy Act for India, or any part of India, without some assistance from Parliament, and the mode in which I suggested last year that that assistance should be given was by an enabling Act to be passed by Parliament at some time before our Indian measure was carried through its final stage. I sketched out and annexed to the Statement of Objects and Reasons two alternative drafts of an Act of Parliament, which were submitted to the Secretary of State for consideration by the English authorities.

"This is how the matter stood last July. It remains for me to explain what has taken place since then. I will begin with the action of the authorities in England.

"The Secretary of State has expressed his general approval of the draft Indian Bill which this Government put in circulation last year; but, with reference to our suggestions for parliamentary legislation, he has forwarded to us for our information certain correspondence which has taken place between the India Office and the Board of Trade as the Department in charge of English bankruptcy administration. The Board of Trade see no objection to one of the draft Acts of Parliament which we sent home, but raise a further question as to the desirability of obtaining a general enactment which should enable the

Courts of the United Kingdom or any of the British colonies or possessions to give effect to the provisions of the bankruptcy laws of any other part of the British Empire, as is now the case under certain sections of the English Bankruptcy Act (sections 117-119) with regard to the different portions of the United Kingdom. The Board also suggest the advisability of obtaining power to extend section 14 of the English Bankruptcy Act, with a view to enabling a Court in any part of the British Empire to suspend bankruptcy or insolvency proceedings before it, if in its opinion those proceedings could be more satisfactorily conducted in another Court.

"On these points the Board of Trade have been consulting the Colonial Office, and promise a further communication when the replies from the Colonial authorities have been received.

"Now I quite agree with the Board of Trade about the expediency of giving inter-colonial and imperial effect to the bankruptcy laws of the different parts of the British Empire; and if the suggestions made by this Government eventually result in legislation which will not only enable the Calcutta creditor to have his decrees enforced and the property over which he has claims to be easily realized at Singapore, Hongkong and Melbourne but will confer similar advantages on creditors in the Straits Settlements, Australia and elsewhere, we shall have fairly earned the gratitude of our colonial friends. But legislation which is to give satisfaction to all the scattered colonies and dependencies of the British Empire will take time, and it is hardly fair to ask India to wait until all other parts of the Empire are agreed about what they want.

"I think therefore that our best course will be to pass without further delay as good an Act for India as we can, and then to ask the Secretary of State and Parliament to pass such supplementary legislation as will suffice for Indian requirements, without prejudice to any more general enactment extending to the whole Empire which it may be found expedient or practicable to pass hereafter. I have no doubt that Parliament would appreciate the reasonable character of such a request. We should, I believe, have a better chance of getting a confirming than an enabling Statute, and I think I see my way to avoiding some of the difficulties which had occurred to me last year as likely to arise out of confirmatory legislation.

"Passing now from what has been done in England to what has been done in India,—the draft Bill, with the accompanying papers, was published in the Gazette and circulated among Local Governments for opinion in the course of last

June. I had hoped that the replies might be received in time to admit of my introducing the measure in the course of the last Calcutta session, but the last and most important of them did not reach me until March, and consequently I have been compelled to defer the present motion until after the return of the Council to Simla. It would be impossible to prepare a satisfactory measure on the subject of the Bill without the active co-operation of those who are conversant with the practical working of the insolvency law in the Presidency-towns, and I have to express my sincere thanks to those gentlemen who have been good enough to study the draft Bill, and to offer suggestions and criticisms on its provisions. I have found specially useful the report of Messrs. Wilson, Pigot and Trevelyan, who constituted the committee of Calcutta Judges appointed by the High Court to consider the draft, the note by Mr. Macgregor, who is the Official Assignee at Calcutta, the report of the Bombay Chamber of Commerce, and the note by Messrs. Farran and Turner, the Acting Prothonotary and the Official Assignee at Bombay.

"The Bombay Chamber of Commerce tell us that before discussing the detailed provisions of the draft they had to consider two broad questions—first, whether in the existing state of things a new Insolvency Act was called for; and secondly, whether in that event the general principles of the proposed Bill were thoroughly adapted to the requirements of the trading community and to the conditions attending insolvency in India. To the first question, we are informed, the reply was unanimously in the affirmative. 'The necessity,' says the report, of a radical reform in the bankruptcy law for India has long been keenly felt by the mercantile public, and has on numerous occasions been the subject of anxious consideration. In the address with which the Chamber had the honour to welcome the arrival in India of His Excellency the Viceroy the matter was prominently mentioned as one of pressing importance; and had it not become known that the Bill now under report was in preparation, it was the intention of the Chamber to memorialise Government begging that action might be taken at the earliest possible opportunity."

"The second question, they say, did not admit of so ready an answer. The difference between the causes and circumstances of English and Indian insolvencies, they remark, is so great that at first sight the mere fact of the Bill being drawn on the same lines as an English Act carries with it a presumption of possible unfitness. But a closer examination of its provisions, they go on to say, shows that in its leading principle of official control over bankrupt estates it is in a great measure a return to what has long been recognized as one of

the best features of the present Indian insolvency law, and it is on this ground that I understand the Chamber to return an affirmative answer to the second as well as to the first of the questions which they had raised. In the revised version of the Bill it will be found that this feature of official control, to which the Bombay Chamber so justly attach importance, is a good deal more emphasized than in the draft which was circulated last year.

"It is fair to say that one of the Bombay authorities,—Mr. Hart, Chief Judge of the Bombay Court of Small Causes,—taking his stand on the differences between England and India, draws another conclusion from that arrived at by the Chamber of Commerce, and questions altogether the desirability of applying the principles of the English Bankruptcy Act to India. If the measure which I am asking leave to introduce were to apply to India generally, there would be very great force in his criticisms; but it must be borne in mind that the present measure is only intended to extend to the Presidency-towns and to a few other places where the conditions of insolvency resemble much more closely those existing in England than they do in the Mufassal.

"Among the differences between English and Indian conditions to which the Bombay Chamber direct prominent attention is the fact that imprisonment for debt has been abolished in England but not in India. Now on imprisonment for debt I have my own opinion. I believe that the system of imprisonment for debt as such (I am not speaking of cases where indebtedness involves an element of fraud) is bad for the creditor, bad for the debtor and bad for the country at large. I know that this opinion is shared by some of my colleagues, in particular by my friend Mr. Hope, who has on more than one occasion delivered his soul on this subject with much effect, and it is strongly supported by some papers which have been sent to us from Burma with reference to the present Bill. Moreover, some interesting reports on the law of foreign countries which Sir H. Maine was kind enough to have collected for me, and which were published in the *Gazette of India* last year, show that this is the view to which the legislatures of all civilized countries are tending, and at which most of them have arrived. But when Indian authorities were consulted on this subject some four or five years ago there was very great divergence of opinion about it, and a large number of persons, whose opinion, from their position, their experience and their knowledge of the country, is entitled to the greatest weight, were strongly opposed to the abolition of imprisonment for debt. In fact, it appeared that Indian opinion generally, both official and unofficial, was not yet ripe for any such change, and that, under existing circumstances, it would be useless for me or for any one else

to propose any such alternation of the law affecting India generally. Whether we should not be justified in proposing legislation confined in its scope to a particular province where the balance of authoritative opinion is in favour of change, is another question into which I will not enter now.

"But, so far as the present Bill is concerned, I yield to the opinion of the Bombay Chamber, which I fear would be endorsed by Chambers of Commerce elsewhere, that it would be unadvisable as yet to deprive creditors of the power of imprisoning for debt. Accordingly the present Bill has been prepared on the assumption that imprisonment for debt is to be retained. There is no doubt some little difficulty in adapting the provisions of the English measure to a country where imprisonment for debt still remains, but the difficulty is not insuperable, and I think that it may be surmounted by means of a few adjustments and adaptations, in addition to those which appeared in last year's draft.

"Before I leave the Bombay papers I will refer to one other point which is of considerable importance in a province like Bombay, where British territory and Native States are much intermixed and interlaced. The Bombay Chamber remark that, so far as Bombay is concerned, one of the greatest disadvantages which creditors have to contend with is the facilities which fraudulent debtors have for escaping from the jurisdiction of the Court by absconding into Native territory. Among a certain class of native traders, they say,—and that by no means the lowest,—this is a very common means of evading punishment, and owing to the ease with which it can be accomplished, it tends greatly to encourage fraudulent bankruptcy. Once make it possible, they urge, for the writ of the Bankruptcy Court to take effect in Native States, and reckless trading will have received a death-blow which no other form of legislative enactment could administer. The Chamber frankly admit the difficulties attending their proposal; but I am not sure that they have fully realized that the suggested remedy is one which it is beyond the competency of the Indian legislature to apply. We can, by legislation in this Council, provide for the arrest of debtors about to abscond from British into Native territory, and I propose to do so by the present Bill. We cannot, by legislation in this Council, make the writs of our Bankruptcy Courts run in Native territory. If further facilities than those which now exist are to be given for executing British writs in Native territories, they must be given by means of executive arrangements carried out through the agency of the Foreign Department. The question whether such facilities could be given was a good deal discussed in the years 1867 and 1868, and was eventually decided in the negative, in accordance with the strongly expressed opinion

of the Bombay Government of that day. If the present Bombay Government can see their way to meeting the objections which 18 years ago were considered fatal to the adoption of proposals similar to those now put forward, I feel sure that the Government of India will gladly co-operate in taking such action as may be practicable for preventing Native States from being converted into Alsatias for fraudulent debtors.

"I will now turn to the Calcutta criticisms. The Committee of Calcutta Judges and the Official Assignee, Mr. Macgregor, have gone through the draft Bill clause by clause, and have made some most useful suggestions, the majority of which I propose to adopt. The point to which they attach most weight is one to which I have already adverted, namely, the importance of maintaining strict official control over Indian insolvencies, and the impossibility in almost every case of administering an insolvent estate in this country through the agency of the creditors and a trustee appointed by them. To this view I fully assent. The reason why I thought that the English Bankruptcy Act of 1883 could be more easily adapted to the circumstances of this country than its predecessor was because it involves a return to the principle of official supervision. The Act bears on the face of it signs of its being a compromise between two views—the view embodied in the Act of 1869 that the administration of debtors' estates should be left as much as possible to the creditors themselves, and the view that official supervision is indispensable to prevent waste and scandal. The administration is given to a person who is called the trustee, and who is supposed to be appointed by and to act in consultation with the creditor; but he is not given nearly as free a hand as under the old Act, and every inducement is offered to employ official rather than voluntary agency, especially in the case of small estates. The draft Indian Bill which was published last year reversed the presumption underlying the English Act, and proceeded on the view that the employment of the Official Receiver (or, if we retain the existing Indian term, the Official Assignee) would be the rule, and the employment of a creditor's trustee the exception. And, after hearing the very forcible objections which have now been urged to the administration of insolvent estates in India through trustees and committees of inspection, I think it would be safe and proper to go a good deal further in the direction of official control than I had originally proposed. It appears from the Calcutta papers that, although power is given to the Court by a section of the Indian Insolvency Act to order the election of assignees by the creditors, this power has rarely, if ever, been exercised, and, as far as the Calcutta Judges can ascertain, in only one case in recent years have creditors applied to the Court for an order under this section. In view of this

evidence as to the decided preference of creditors themselves for official administration, I propose in the revised draft to incline the balance a good deal further in the official direction by omitting the machinery of committees of inspection, and by reducing to much smaller compass the parts of the Bill relating to formal meetings of creditors, and to the duties and liabilities of trustees appointed by the creditors, the assumption being that those provisions will be only of exceptional application.

"I also propose, as I have said before, to meet another Calutta criticism by giving the Court power in certain cases of exercising jurisdiction over up-country debtors.

"I reserve for the introduction of the Bill any more detailed explanation of its provisions, and will merely add that I fully assent to what Mr. Macgregor says with regard to the propriety of safeguarding the interests of existing establishments. The only reason why clauses on this subject were not inserted in last year's draft was because I thought they would be best settled after consultation with the persons immediately affected by them.

"This then is the general character of the Bill which I propose to introduce. Having regard to the small number of insolvencies which come before the Courts of the Presidency-towns, and to the extremely petty character of the transactions out of which those insolvencies ordinarily arise, the scope of the measure will be very limited, and I have no desire that it should be extended. Personally I am disposed to agree with the opinion of the Officiating Recorder of Rangoon that if imprisonment for debt were abolished there would be very little insolvency business in India, or that at all events it would be confined to *bonâ fide* trading bankruptcies.

"But until the time is ripe for a more heroic remedy I can offer no better solution of the problem of providing an insolvency law for the centres of Indian commerce than that which is embodied in the measure which I hope shortly to lay before the Council."

The motion was put and agreed to.

The Council adjourned to Thursday, the 13th May, 1886.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

SIMLA;
The 7th May 1886.

S. G. P. I., Delhi.—No. 17 (a) L. D.—28-7-1913.—50