

*Friday,
20th March, 1908*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLVI

April 1907 - March 1908

ABSTRACT OF PROCEEDING
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

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VOLUME XLVI



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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict. c. 14).

The Council met at Government House, Calcutta, on Friday, the 20th March, 1908.

PRESENT :

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

His Honour Sir Andrew Fraser, K.C.S.I., Lieutenant-Governor of Bengal.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., G.C.I.E., Commander-in-Chief in India.

The Hon'ble Mr. H. Erle Richards, K.C.

The Hon'ble Mr. E. N. Baker, C.S.I.

The Hon'ble Major-General C. H. Scott, C.B., R.A.

The Hon'ble Sir Harvey Adamson, Kt., C.S.I.

The Hon'ble Mr. J. O. Miller, C.S.I.

The Hon'ble Mr. W. L. Harvey, C.I.E.

The Hon'ble Sir Rameshwara Singh, K.C.I.E., Maharaja Bahadur of Darbhanga.

The Hon'ble Munshi Madho Lal.

The Hon'ble Mr. Gangadhar Rao Madhav Chitnavis, C.I.E.

The Hon'ble Mr. H. W. W. Reynolds.

The Hon'ble Mr. F. A. Slacke, C.S.I.

The Hon'ble Mr. H. A. Sim, C.I.E.

The Hon'ble Tikka Sahib Ripudaman Singh of Nabha.

The Hon'ble Dr. Rashbehary Ghose, C.I.E., D.L.

The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.

The Hon'ble Mr. A. A. Apcar, C.S.I.

The Hon'ble Mr. S. Ismay, C.S.I.

The Hon'ble Maung Bah Too, K.S.M.

The Hon'ble Mr. W. W. Drew.

The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

The Hon'ble Mr. W. R. H. Merk, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MUNSHI MADHO LAL asked :—

“Is the Government aware that different versions have been reported in different papers about the sedition case against Lala Zorawar Singh and other

[*Munshi Madho Lal ; Sir Harvey Adamson ; [20TH MARCH, 1908.]*
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respectable Hindus of Etawah in the United Provinces of Agra and Oudh? Will the Government be pleased to state the full particulars of the case to clear up misunderstandings and also mention names of persons, if any, who were punished for fabricating a false case?"

The Hon'ble Sir HARVEY ADAMSON replied:—

"No proceedings for sedition have been instituted or recommended for institution against the persons referred to. In July last certain papers, purporting to show that some Hindu gentlemen at Etawah were in communication with political agitators in the Punjab, came into the hands of the local authorities. The Magistrate and District Superintendent of Police considered the papers genuine, but investigation by experts furnished grounds for suspecting them to be forgeries by one Khalil who thereupon absconded. Proceedings against him were recorded under section 512, Code of Criminal Procedure and sections 468, 469 and 471 of the Indian Penal Code by the Magistrate of the District, who completed them on March 6th. On that date Zorawar Singh and others applied that further witnesses should be summoned on the ground that the enquiry was incomplete and that the forgeries were the result of a deep-laid conspiracy of which Khalil was only an instrument. The Magistrate after hearing Zorawar Singh at length refused to allow the applicants to interfere in the course of the proceedings under section 512, but informed them that if they filed a definite complaint of definite offences against definite persons it should receive the fullest enquiry in open Court. No evidence has been obtained to implicate any one except Khalil in the alleged forgeries."

The Hon'ble MUNSHI MADHO LAL asked:—

"Will the Government be pleased to mention whether on the occurrence of a temporary vacancy, caused by absence on leave, in the higher grades of the Provincial Civil Service and amongst Tahsildars, acting grade promotions are given as in the case of posts held by the members of the Indian Civil Service; and, if not, whether it is not desirable to allow the Provincial Civil Service such a concession?"

The Hon'ble Mr. BAKER replied:—

"Generally speaking the facts are as stated in the first part of the question, namely, that acting promotion from grade to grade is not allowed in the Provincial and Subordinate Civil Services. The Government of India are not disposed to extend this system to any of the services in which it does not at present prevail."

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Mr. Baker.]

The Hon'ble MUNSHI MADHO LAL asked :—

“(a) Will the Government of India be pleased to state whether it is contemplated to reduce the present strength of the Calcutta High Court by transferring a part of the Hon'ble Court, or locating one or two Division Benches in the new Province (Eastern Bengal and Assam) ?

“(b) Is the Government aware that any arrangement by which the strength, power or jurisdiction of the Calcutta High Court is curtailed will be a most unpopular measure ?”

The Hon'ble SIR HARVEY ADAMSON replied :—

“The Government of India do not contemplate the transfer of a part of the Calcutta High Court to Eastern Bengal and Assam or the location of Division Benches in that province.”

FINANCIAL STATEMENT FOR 1908-1909.

The Hon'ble MR. BAKER introduced and explained the Financial Statement for 1908-1909. He said :—“ My Lord, I lay on the table the Financial Statement for 1908-1909 with the usual appendices and accounts, and will, with Your Lordship's permission, give the Council a brief summary of the financial position.

“ In each of the last three budgets which I have presented, it has been my fortune to report an improvement of greater or less magnitude in the realised revenue and surplus of the year, as compared with the original estimate. To-day, I regret to say that my task is different. The failure of the monsoon over a large part of Northern India and the existence of widespread famine will have prepared the Council for a comparative deterioration in the position. The speeches of Your Excellency and other speakers at last Tuesday's meeting at the Town Hall have given the public a full and graphic picture of the extent and severity of the misfortune that has befallen the country, and I need not go over the ground again. It is sufficient to state that famine has been declared to exist in an area of about 118,000 square miles in British India and 15,000 square miles in the Native States of Central India. The population affected is nearly 50 millions in all, and at the beginning of the present month nearly a million and a half of persons were in receipt of relief. The distress would have been far greater but for the winter rains which, though late in coming, were abundant and well distributed. We have issued over 2 crores of rupees in the form of takavi loans during the current year and have provided an equal amount for next year. We have suspended over 3½ crores of land revenue in the two years and have made ample provision for expenditure on direct relief.

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" These results are necessarily reflected in the accounts of the year. In accordance with a decision which was foreshadowed in the Budget debate of last year, we have arranged to exclude from our estimates and accounts the transactions of a number of local funds, aggregating rather more than 3 crores of rupees on each side of the account. Allowing for this adjustment, a year ago we estimated the revenue of 1907-1908 at 108,75 lakhs, the expenditure chargeable against revenue at 107,59 lakhs, and the surplus at 116 lakhs. We now calculate that the revenue will amount to 106,48 lakhs, a falling off of 227 lakhs. The expenditure is now estimated at 106,13 lakhs, and the surplus at 35 lakhs, being a net worseness of 81 lakhs.

" The causes of this are as follows :—

	Lakhs.
(1) Land revenue receipts have fallen off in consequence mainly of the famine by	255
(2) Our net Railway earnings have fallen short of the estimate by	109
This is partly due to the famine, but also in large measure to the rise in working expenses and cost of renewals.	
(3) The direct charges for famine relief have amounted to 77 lakhs, being an increase over the estimate of	68

" These three items give a total deterioration of 432 lakhs.

" On the other hand Opium and Customs have done better than we expected to the extent of 56 and 55 lakhs, respectively. There is a saving of 114 lakhs in Army charges due partly to delay in carrying out the re-distribution scheme, and partly to savings and economies in other directions. These would have been greater but for the prevailing high prices of food and fodder, which have increased the cost of feeding the army by nearly 13 lakhs. The cost of the Zakka Khel expedition is estimated at about 8½ lakhs, of which the greater part will fall into the accounts of the current year. Under other heads of revenue and expenditure there is a net improvement of 50 lakhs, and the expenditure charged against provincial balances and not against current revenue is greater by 76 lakhs. These improvements help us to the extent of 351 lakhs, and the net result is the worseness of 81 lakhs already mentioned.

" For next year, our calculations are based on the assumption that the monsoon will be normal. If that should happily prove to be the case, we have reason to hope that the progress of the country will resume its usual course, and that the set back which it has met with in the present year will rapidly be made good. In this view we take credit for a reasonable development of revenue under

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all the principal heads, and for a full recovery under Land Revenue and Railway earnings. On the other hand we have provided 132 lakhs for famine relief. The gross revenue is estimated at 110,16 lakhs, the expenditure chargeable against revenue at 109,30 lakhs, and the surplus at 86 lakhs. The Military charges are estimated at 31,13 lakhs which is 79 lakhs less than the budget for the current year though 35 lakhs more than the probable actuals. This result has been effected mainly by restricting the grant for 'special' expenditure to 250 lakhs, and allowing no regrant of lapses. The reduction would have been greater but that we have been forced by reason of the prevailing high prices to increase the provision for feeding the army by 19½ lakhs.

"Our opium revenue is taken at 57 lakhs less than in the current year in pursuance of our policy of gradual restriction of the cultivation and export. An agreement has recently been arrived at between His Majesty's Government and the Government of China in regard to this subject, and a brief account of the terms will be found in the body of the Statement.

"In existing circumstances it is not in our power to undertake anything in the way of remitting taxation. Neither can we do very much towards increasing useful expenditure for the development of the country. We have, however, provided 12 lakhs for police reform, in addition to 20 lakhs assigned for this purpose to the United Provinces and Madras in the revision of their settlements. We have also provided a recurring grant of 30 lakhs a year for distribution among the provinces for expenditure on the improvement of the public health with special reference to the prevention of plague, and the improvement of the sanitary conditions of urban areas.

"For capital expenditure on Railways we have been able to provide 15 crores of rupees, but almost the whole of this will be required for open lines or lines already under construction, and not more than 20 lakhs are likely to be available for new projects. For Irrigation we have increased the capital grant to 150 lakhs. It is proposed to raise a rupee loan of 3 crores in India, and to issue temporary India Bills in London to the extent of half a million sterling. The present intention of the Secretary of State is to draw Bills on India to the amount of 18½ millions sterling, but additional Bills will as usual be sold, if required, to meet the demands of trade. These announcements are all made subject to the usual reservation.

"These, my Lord, are the leading features of the Budget for the ensuing year. I am very conscious that it is less favourable than those which I have been enabled to present during the last three years. And it must be admitted that the tide of our prosperity has received a check. Nevertheless there is no cause for

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[*Mr. Baker ; Mr. Erle Richards.*] [20TH MARCH, 1908.]

despondency. Our ordinary revenues show every symptom of healthy elasticity. The extent of the famine which has descended on Northern and Central India is markedly less than in either 1897 or 1900—while the courage, confidence and resource with which it is being faced by the people themselves have been noted by all observers, and merit the ample recognition and unstinted co-operation of the Government. If the rains of next autumn are happily propitious, there is good reason to hope that the present temporary depression will pass away like a cloud and leave no permanent trace behind.”

INDIAN LIMITATION BILL.

The Hon'ble MR. RICHARDS: “My Lord, I beg to present the Report of the Select Committee on the Bill to consolidate and amend the law for the Limitation of Suits, and for other purposes.

“The amendments made by the Committee are set out in the Report and I desire to call attention to two only. I do so because they were not in the Bill as introduced. The first relates to legal disability, clause 6. The Committee recommend that minors should not be entitled to claim the benefit of minority in regard to applications other than applications for execution. They think that the power to open up transactions on attaining majority, in cases such as those to which the clause refers in which the minor has been represented by a guardian, at the time, should be restricted. The second point relates to clause 14. It is proposed to add an explanation to that clause to make it clear that it applies to cases of misjoinder of parties or of causes of action as well as to cases of defect of jurisdiction; this will put an end to considerable conflict of opinion.

“In the course of the discussions on this Bill various proposals were put before the Committee for restricting periods of limitation; but the Committee have not adopted those proposals. Changes of that character appeared to them to involve questions of policy and of policy which would differ in the different parts of India. As an illustration there is the matter to which I referred in introducing this Bill—the limitation of suits for redemption by mortgagors which is now the long period of sixty years. It was pressed upon the Committee from several quarters that this period should be reduced to twelve or at least to twenty years. On the other hand, it was equally pressed upon them from other quarters that any change of that kind would be disastrous in its effect. It is clear that changes such as this cannot be lightly undertaken. If they are to be made they must be made after the fullest consideration and must be brought forward as separate proposals; they are not within the scope of this Bill.

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“It has not been possible to present the Bill at an earlier period and it cannot therefore be passed until the Council meets at Simla. Meantime it is hoped that Courts before whom cases affected by the recent Privy Council decision may come will allow those cases to stand over until the Bill becomes law. The delay will give a further opportunity for consideration of the Bill, if any be needed.”

PUBLIC CHARITIES ACCOUNTS BILL.

The Hon'ble DR. RASHBEHARY GHOSE moved for leave to introduce a Bill to give greater facilities to the public for calling for and inspecting Accounts of Public Charities. He said :—“My Lord, the Bill I am going to introduce today may be said to be a companion measure to the Code of Civil Procedure which was passed on Friday last. It embodies a proposal which was made by me as a member of the Simla Committee with which my colleagues expressed their sympathy ; though they did not see their way to accept it, until it had been fully discussed by the leaders of the communities likely to be affected by my proposal. It was, however, circulated as part of the report and I am glad to say obtained a very considerable measure of support. I did not, however, move any amendment at the last meeting of the Council, when the Code of Civil Procedure Bill was taken into consideration ; because it was thought desirable that a further opportunity should be given to the communities interested in the question of discussing the proposal ; and this is my reason for embodying it in a separate Bill.

“My Hon'ble Colleague the Tikka Sahib spoke of my proposal the other day as a very modest proposal. And so it is ; for I do not suggest any drastic reforms ; as I wish anxiously to avoid anything wearing even the slightest semblance of interference with our religious institutions. I am not, therefore, going to invite the Council to take away any single right or privilege, however much liable to abuse, now possessed by the heads of our religious and charitable institutions or to interfere in the slightest degree with their management. All that I ask is that the public, who are the real beneficiaries, should be able to obtain under proper safeguards an inspection of the trust accounts. In making this modest demand, I am not imposing any new obligation on the trustees ; for they are already bound under the law to keep proper accounts of the trust property. ‘The first and primary duty of a trustee,’ said a distinguished English Judge, ‘having money in his hands to be received and to be paid is that an account of his receipts and payments should be kept to be produced to those interested in the account when it is properly demanded.’ In the case in which these remarks were made the trustees urged that they were illiterate men and could not keep accounts ; but His Lordship answered

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that it is the first duty of a trustee, if he cannot keep accounts, to provide some one who can. And this obligation has been recognised by the Indian Legislature in Act XX of 1863, section 13 of which enacts that it shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of the Act shall apply, to keep regular accounts of his receipts and disbursements, in respect of endowments and expenses of such mosque, temple or other religious establishment. These accounts, however, are not open to the inspection of the public; though when a suit is instituted, the Court may direct the accounts of the trust to be taken in the ordinary way. The Bill thus merely provides a cheap and expeditious method of obtaining that which can be obtained even now, but only by the cumbrous, dilatory and expensive process of what is known in this country as a regular suit. Then again, it is not always easy to ascertain whether a breach of trust has been committed by the trustee which would render him liable to removal, unless the accounts of the trust property are available to the relators; and the inability to obtain inspection, I know from my professional experience, is a serious embarrassment in the way of persons desirous of instituting a suit against a dishonest trustee. To the possible objection that this right may be used for some indirect or other improper purpose, I would answer that any abuse of the kind is sufficiently guarded against by requiring as a condition precedent to the making of any such application, the consent of the Advocate General or of some officer specially empowered in that behalf by the Local Government. There is nothing, therefore, in this Bill to create suspicion or to excite alarm except possibly in the minds of those who 'creep and intrude and climb into the fold'—faithless to their vows and to the rules of their order.

"My Lord, I am aware it is never safe to prophesy till you know. But in the present instance I may venture to affirm without much rashness that this very modest Bill will not give rise to any heated controversy. On this point I have no misgivings whatever. I am absolutely certain that it will be welcomed by every honest trustee and will not be opposed even by questionable occupants of the guddee. For they must know that secrecy always engenders suspicion and distrust except—and it is not an unimportant exception—in the case of any official despatch or resolution. They must know also that they cannot oppose this Bill without rendering themselves open to the suspicion that they are unfaithful stewards—a dishonour to their order and a reproach to the community to which they belong.

"My only fear is that this measure might not satisfy the more ardent reformers who insist upon a thoroughly effective supervision over religious

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houses, as I gather from some of the representations which have been made to the Legislative Department and also to me personally by public bodies as well as by leading men from various parts of the country, in which they point out that the emancipation of Hindu and Muhammadan religious endowments from all effective control which was carried out by Act XX of 1863 during Lord Lawrence's administration, under influences which I need not discuss, was a measure of very doubtful wisdom. I repeat, my modest Bill would hardly satisfy these reformers. Of one thing, however, I am certain. I am confident that the heads of religious houses can have no ground whatever of complaint. They can have no ground whatever of complaint against a measure which does not impose any new duty upon them or interfere in any way with their rights and privileges. They can have no ground of complaint whatever against a measure which by allowing their accounts to be inspected by the public, subject to clearly defined restrictions, is likely to win back the confidence of the people which some of them, I fear, have forfeited by their misconduct. And this reminds me that many of these heads fully approve of the proposal contained in this Bill. For they are men who scrupulously observe their vows—men who have nothing to fear from a law which, without impairing their legitimate authority, is only intended to check breaches of trust by those who ought to illustrate in their lives and conversation the great law of sacrifice; and the example of these holy men will, I hope, serve as a guide to their weaker brethren."

The Hon'ble TIKKA SAHIB RIPUDAMAN SINGH OF NABHA said :—
 "Last week, I expressed my disappointment at the Hon'ble Dr. Ghose's suggestion relating to charitable trusts not being accepted in connection with the Code of Civil Procedure, but I am delighted to find that the Government has been pleased to give leave to the learned Doctor to introduce a separate Bill to carry out the object which is in view. Although the concluding remarks of the Hon'ble Law Member's speech at the last meeting of the Council are not very encouraging, yet we have to heartily thank the Government for this practical sympathy which they have shown in the cause of reform. In the papers about the Code of Civil Procedure received in the Legislative Department, an overwhelming majority of the opinion of both Hindus and Muhammadans is to be found, supporting the Hon'ble Doctor's suggestion. Then again in view of the fact that persons like the Hon'ble Munshi Madho Lal—the guardian and the keeper of the Vedás—give their hearty support to the proposed reform, and on whose high authority we learnt the other day that even an 'orthodox' body of the Hindus like Sri Bharat Dharm Mahamandal have addressed the Government on the subject, asking for more facilities, to

[*Tikka Sahib of Nabha; Munshi Madho Lal.*] [20TH MARCH, 1908.]

be given by law for proper control and management of public charities and endowments, I have great hopes for the future, and I feel almost sure that something will be done in this respect. I wish the Hon'ble Dr. Ghose every success in this noble cause, and I sincerely trust that his Bill will not meet the same fate which the Hon'ble Mr. Ananda Charlu's Bill met a few years ago. My Lord, the Bill which will be introduced by the Hon'ble Dr. Rashbehary Ghose has my hearty support."

The Hon'ble MUNSHI MADHO LAL said :—" My Lord, I have very great pleasure in supporting the motion of my Hon'ble friend, Dr. Rashbehary Ghose, as I am in full sympathy with his object. I submit that the acceptance of his very modest proposal will not militate against the avowed policy of religious neutrality which has been so wisely followed in this country. If it did, I would, as a loyal subject, deem it my duty to inform Your Excellency's Government against the introduction of such a measure. As a matter of fact the principle underlying the proposed legislation has already been admitted in the existing law. It empowers the Courts to call for accounts on the institution of a suit. The proposal now before the Council will give the public, interested in a public trust, the power to move the Courts, in a less expensive and more expeditious manner, to interfere with the same if wrongly managed, by calling for accounts in a summary manner. And I submit that it is but fair and reasonable that persons who control public trusts—whether religious or charitable—should be liable to render accounts of their trust to the public. I cannot understand that if the Government of India and other Local Governments and bodies are asked to exhibit their accounts before the public why the trustees of endowments and of religious charities and institutions should be exempted from this simple duty.

" My Lord, there is a general feeling in favour of the proposed law both amongst the Hindu and the Muhammadan communities. A distinguished member of the Musalman community on this side, in a letter published in the *Statesman* newspaper of the 28th February, 1908, writes that ' the proposal of Dr. Ghose has the full sympathy and support of the intelligent portion of the Muhammadan community * * * , that it will not affect the religious susceptibilities of the Muhammadans, * * * that the Muhammadan community will welcome any provision in the law which would place at the disposal of Judges and the public a workable and efficient machinery for checking and dealing with cases of inefficient administration and malversations similar to what the Muhammadan law provides in matters of public charities.' Then again in the *Englishman* newspaper of the 3rd March, 1908 appears a telegraphic report of a public meeting, held under the auspices of the Hindu Sabha of Lahore,

[20TH MARCH, 1908.] [*Munshi Madho Lal ; Sir Harvey Adamson.*]

held there on the 2nd instant with the object of requesting this Council to accept Dr. Ghose's suggestion. It appears that one of the speakers at that meeting suggested that if an application proved frivolous and vexatious, the applicants should be made to pay the costs incurred in preparing the accounts demanded. This is a matter of detail which the Courts could fairly be left to exercise their discretion about. The Zamindars Association of Muzaffarnagar, and a public meeting of the residents of Cawnpore, as well as the United Provinces Social Conference recently held at Lucknow, have supported the proposed enactment. The Zamindars Association of Muzaffarnagar go further and wish to empower the Courts to direct a trustee to file in Court copies of the documents and papers connected with the endowed properties—an addition which I have no doubt will be considered in due course should the Bill be allowed to be introduced and referred to a Select Committee."

The Hon'ble SIR HARVEY ADAMSON said:—"My Lord, I have a few words to add to what was said by the Hon'ble Mr. Erle Richards on this subject last week in the debate on the Code of Civil Procedure Bill. It cannot be doubted that serious abuses exist in the management of many religious endowments in India. The policy of the Government of India remains as it was, a policy of non-interference with religious endowments. The present Bill is free from objection inasmuch as it prescribes no direct interference by Government, but merely gives to the people themselves further facilities for protecting religious endowments from abuse. Any move in this direction has the sympathy of the Government of India.

"The law as it at present stands is that in the case of an alleged breach of a trust created for religious purposes, any two persons, having an interest in the trust, may, after having obtained the consent of the Advocate General, institute a suit. When the suit has been instituted the Court has the power to require the trustee to exhibit accounts. It appears that such of the public as take an interest in the management of religious trusts have made little use of these powers, and it is said that the reason is that without seeing the accounts of a trust no one is in a position to institute a suit alleging maladministration. The Bill therefore proposes to give greater facilities in this direction by allowing any two persons who are interested in a trust and who have obtained the consent of the Advocate General, or outside the Presidency-towns of the Collector, to make an application for the exhibition of accounts.

"Before giving their final support to the Bill the Government of India desire to ascertain how these facilities are likely to be exercised. On the one

[*Sir Harvey Adamson.*] [20TH MARCH, 1908.]

hand it may be alleged that it is only right that every trustee of a public trust should be obliged to exhibit to the public the accounts of his trust. As an abstract principle it is impossible to deny so reasonable a proposition. On the other hand it may be alleged that as applied to religious trusts in India this proposition involves an innovation and a subversion of existing custom which may have far-reaching and unexpected consequences. Would the facility, a very cheap and inexpensive facility, be likely to lead to oppression, and would it be used for corrupt purposes? Is the guarantee that the consent of the Advocate General, or even of the Collector, must be obtained before making an application a sufficient guarantee that the application is made on proper grounds? Is the Advocate General in the Presidency-towns or the Collector outside in a position to determine such a question, or would he not find it difficult in most cases to refuse so apparently reasonable a request as that the accounts of a public trust should be open to the inspection of the public? Then again it is necessary to consider by what machinery and in what methods these trusts have customarily been managed by honest trustees. In India there is generally immemorial usage in such matters. How does the machinery lend itself to the exhibition of accounts? What will be the effect, say, on an honest manager of a temple if any two ill-wishers, prompted by improper motives, can readily obtain consent and compel him to produce accounts of his shrine for the preceding three years, as the Bill proposes to permit? How will trustees and the general public who worship at the shrine and contribute to its endowment regard such an innovation? Can so radical an alteration of custom, applied by the force of law, be introduced without provoking a resentment which may be politically dangerous?

“Such are the points that must be elucidated before the Government of India can, with an assurance of its expediency, support the Bill. I am aware that a considerable mass of educated opinion in India supports it, but it is a subject which peculiarly touches the common people, and it is desirable to search deeper down and to ascertain the ideas of the priesthood and the people, to ascertain in short how the measure would commend itself to the great bodies of worshippers in India.

“For this reason the Government of India feel that they must hold their hand in a matter which, regarded in the abstract, has their warmest sympathy. The course which we propose to adopt is to vote, without prejudice, for the introduction of the Bill and for its publication, in order that the questions to which I have drawn attention may be examined before the Bill comes up for mature consideration.”

→ The motion was put and agreed to.

[20TH MARCH, 1908.] [Dr. Rashbehary Ghose; Mr. Erle Richards.]

The Hon'ble DR. RASHBEHARY GHOSE introduced the Bill.

The Hon'ble DR. RASHBEHARY GHOSE moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

PRESIDENCY-TOWNS INSOLVENCY BILL.

The Hon'ble Mr. H. ERLE RICHARDS said :—"It will be within the recollection of Council that last session an Act was passed to regulate insolvencies in the Mufassal; an Act which, though it did not provide for every contingency and though in some respects it was incomplete, was at least up to date and effective within its limits. But the law for Presidency-towns—and for the purposes of today I include Rangoon within that term—has not yet been amended; it is still contained in the old Act for the relief of insolvent debtors enacted by the Imperial Parliament in 1848. The object of the Bill which I now ask for leave to introduce is to repeal that Act and to enact an efficient Insolvency Law for the Presidency-towns.

"My Lord, this is no new proposal; a Bill for a similar purpose was introduced in 1886 and appeared in our List of Business with unflinching regularity until a short time ago, while the necessity for legislation has been pressed on Government by High Courts and Chambers of Commerce for the past quarter of a century. We cannot therefore be accused of undue haste if we now take the proposal into serious consideration.

"The history of the various attempts to reform the existing law dates back to 1870 when Sir James Stephen proposed to enact a new law for the whole of India. This proposal was thought to be too ambitious; the Mufassal was not at that time ready for a Bankruptcy law; and the Bill was dropped. But when thirteen years later proposals to make some small amendments in the Act of 1848 were circulated, it appeared from the comments on those proposals that there was a widespread demand for an entirely new Act for the Presidency-towns. The matter was accordingly taken up by Sir Courtenay Ilbert, the Law Member at the time, and in 1885 a Bill was drafted and circulated, framed on the lines of the Act which had been passed in England two years before—the Act of 1883—in which the present law of bankruptcy was and still is consolidated. The opinions on

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that Bill show a general agreement that the Act of 1848 was out of date and ineffective. There was, as indeed was unavoidable, a considerable difference of opinion as to details, but on the whole the Bill was favourably received. The mercantile communities of the Presidency-towns who are specially interested approved of it. The Madras Chamber of Commerce writing on the 9th September, 1885, expressed themselves in the following terms :

'The Chamber approves of the great advance that it is proposed to take in the direction of a clearly defined Bankruptcy Law for the trading centres of the whole country; it trusts that the Bill may become law, since it seems to the Chamber to be a very complete measure.'

"The Bombay Chamber, on the 25th November of that year, recorded that they were unanimously in favour of a new Insolvency Act. They said that the necessity of a radical reform in the Bankruptcy Law for India had long been keenly felt by the mercantile public, and had on numerous occasions been the subject of anxious consideration; that in the address with which the Chamber had had the honour to welcome the arrival in India of His Excellency the Viceroy the matter had been prominently mentioned as one of pressing importance; and that had it not become known that the Bill then under report was in preparation it had been the intention of the Chamber to memorialise Government begging that action might be taken at the earliest possible opportunity.

"The Calcutta Trades Association on the 14th of December wrote—

'It would be impossible, the Committee felt, to overrate the importance of the proposed Act to the trading community throughout India; they have consequently given to its provisions the most careful consideration, and are unanimously of opinion that the measure as a whole will afford assistance and protection to both debtor and creditor.'

"The Committee of the Bengal Chamber of Commerce on the 30th of April, 1886, recorded their opinion 'that the Bill made a much-needed improvement in the law then in force.'

"The Bill was modified in some respects to meet criticisms, and on the 20th of May, 1886, was introduced in this Council. There, for some reason which is not known, the matter seems to have stopped. Whether the legislature was engrossed in other projects or whether the very technical character of the subject chilled the enthusiasm of Council I do not know, but the only action taken was that in 1892 a Select Committee considered the Bill at one meeting and did no more, and that in 1899 a second Committee again took up the Bill and after one meeting reported that it should not be proceeded with until some modifications

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had been made. Since then no further steps have been taken, but in the interval the Provincial Insolvency Act has been passed with the result, as the Chief Justice of Madras has pointed out, that the Law of Insolvency is enlightened and up to date in the Mufassal, while in the Presidency-towns it continues to be antiquated and inefficient. Writing in 1902, the Bengal Chamber of Commerce again urged the matter on the attention of Government. They observed that for years past the insolvency procedure in the Presidency-towns had been regarded as most unsuited to modern requirements and conditions and greatly in need of reform. They said that the necessity for the adoption of a reformed procedure had been often pressed; that that necessity was continuing and increasing and that the Committee felt that in the public interests and in the interests of the trading community the desired amendment of the law should not be longer delayed. The same Chamber have repeated this representation in connection with the Provincial Insolvency Act.

“ I think, my Lord, that I have said enough to show that in the opinion of the commercial community this legislation is needed, and I have no doubt that the High Courts will concur in that opinion. In fact our Act of 1848 is a survival of the old law partly contained in the Bankruptcy Law, partly in the Insolvent Debtors Law which was repealed in England so long ago as 1869 and was re-enacted there in an improved form in 1883. The Act gives adequate protection to debtors, but it does not give adequate powers for the realisation of assets in the interests of creditors. The protection of honest debtors should be a main object of any Insolvency Law, but consistently with that object the law should proceed on the principle that the estate is for the creditors and not for the debtor. Further than that, as I venture to suggest to this Council, the Legislature in an Insolvency Act should recognise that the trading methods and conduct of a debtor are not matters merely between him and his creditors, but concern the interests and the welfare of the whole trading community and of the State, and for that reason should insist on enacting sufficient powers for the prevention of fraud and for the punishment of dishonest debtors.

“ With these preliminary observations, my Lord, I turn to the provisions of the Bill, and I will call attention as briefly as is possible to the main lines on which it proceeds. In framing it we have had the assistance of Mr. Archibald Read, the Official Assignee of Madras, and his practical experience has been of great value. It will be found that the Bill follows generally the plan of the Provincial Insolvency Act. The difference in the conditions between the Presidency-towns and the Mufassal make it inexpedient to have one uniform

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Act for the whole of India at the present time : but there will be little difficulty in bringing the two Acts into complete agreement if it be thought wise to do so in the future.

“ The Bill commences in Part I by defining the constitution and procedure and powers of the Court ; but the provisions under this Part call for no special observations ; they do not effect any change of substance in the present law.

“ Part II deals with proceedings from an act of insolvency to discharge and commences with the clause defining acts of insolvency, that is, the events in which the law can be set in motion. This provision corresponds with that in the Provincial Act and is a great advance on the existing law. It gives a creditor the right of interfering at an earlier period and thus of anticipating the disappearance of assets.

“ Under the existing law there are five stages in insolvency—vesting order, interim protection, further hearing, personal discharge, and final discharge. Under the Bill these will be reduced to three—hearing of the petition if opposed, public examination of the debtor, and discharge. The order of adjudication under the Bill operates of itself to protect the debtor ; it is not therefore necessary to preserve the stage of interim protection or the stage of personal discharge. In regard to the order of adjudication it is to be observed that the Bill departs from the Bill of 1886 and from the English law in that it omits the preliminary of a receiving order. It is thought that this preliminary order is unsuited to Indian practice. In England it was introduced mainly on the sentimental consideration that it was a harsh proceeding to make a man a bankrupt before the Court and the creditors had determined how his estate was to be dealt with. In practice, however, the public sees no difference between a receiving order and an adjudication in bankruptcy ; either procedure equally affects a man’s financial credit ; experience has shown therefore that there is no reason for maintaining the double system on this ground ; and all practical hardship can be avoided by the clauses which provide for the annulment of the adjudication when a composition or scheme is approved of. On the other hand, a receiving order under which the property remains vested in the debtor while the control of it is vested in the official receiver gives rise to endless complications and delays. Adjudication under the Bill therefore takes place on the petition and will be made as of course on a debtor’s petition and on a creditor’s petition if unopposed. There is no power to dismiss a debtor’s petition as a punitive measure, but the Court may withhold discharge in cases of misconduct. The provisions of the existing law relating to the filing of a schedule of debts are retained.

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“ The public examination of the insolvent is a cardinal feature of the scheme of the Bill ; it is intended to insure the publicity of the proceedings and to give creditors an opportunity of making inquiry into the affairs of the debtor if they think fit so to do. This is taken from the English practice. The Bill further provides for compositions and schemes of arrangement, following in this the Provincial Act.

“ Discharge must be withheld or suspended or made conditional in certain events, such as the misconduct of the debtor, and in this the Bill follows the English law and the Provincial Act.

“ Part III of the Bill deals with the administration of the property, the proof of debts, and so on. Attention is called to clauses 43 and 44 which avoid transfers of property made by the insolvent within certain periods before the insolvency. These clauses again are taken from the Provincial Act and from the English law.

“ Part IV raises the question of the person by whom estates are to be administered. In India administration must be, it is thought, by the official assignee : administration by trustees or representatives of the creditors would in all probability lead to abuses. The Bill therefore departs from the English Act on this point and enacts that estates are to be administered by an official assignee only. Under the existing law there is power for the creditors to appoint special assignees, but this power has never been used so far as can be ascertained : it is idle therefore to re-enact it. But two proposals are embodied in the Bill with the object of securing to creditors some influence in the administration : they are put forward for consideration. The first is that there should be meetings of creditors not only to consider proposals for compositions or schemes of arrangement but also to consider the insolvent's affairs and the best method of dealing with his property. This will be found in clause 23, and clause 69 specifies the extent to which the assignee is bound to obey the directions of the creditors. It will be seen that the ultimate control is reserved to the Court by the latter clause. Under the rules at present in force in Madras provision is made for similar meetings, and experience there appears to support the present suggestion. The second proposal is contained in Part V ; it is that in cases in which the Court thinks fit to do so, a Committee of inspection of the creditors may be appointed. This is new to Indian law but is thought to be worth consideration. In large insolvencies such as the recent case in Madras a power of this kind would give creditors a larger opportunity of assisting in the realisation of the estate. It will be observed that here again the powers of the Committee are made subject to the control

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of the Court : if the experiment is to be tried it seems wise that the Court should regulate it ; at any rate, until it has been proved by experience.

“ Part VI deals with procedure in special cases and will, it is thought, be of considerable use in practice.

“ Part VII contains the penalty clauses.

“ In Part VIII provision is made for the summary administration of small estates.

“ Part.IX contains powers to administer the estate of a person dying insolvent.

“ Part X authorises the Court to make rules with the previous sanction of the Governor General in Council or of the Local Government, as the case may be, and does away with the necessity of obtaining the consent of His Majesty to rules. Under this power the Courts will be able to retain the greater part of the existing rules if it be so desired.

“ These, my Lord, are the main provisions of the Bill. There are other points which merit discussion, but I will not occupy the time of Council by calling attention to them on the present occasion. They are sufficiently referred to in the Notes on Clauses.

“ The Bill, if it be passed, will repeal the Act of 1848, and this raises a question of some legal difficulty. Under that Act insolvency proceedings in India have force in the United Kingdom, but proceedings under an Indian Act cannot operate outside India ; we cannot legislate for the United Kingdom. It follows that if we repeal the Act of 1848 we shall lose the advantage we now have under it in this respect. We shall then be in no better position than British Colonies, and indeed in some respects we shall be in a worse position, for the title of a colonial assignee in bankruptcy in regard to assets in England may in some cases be founded on the fact that the insolvent is domiciled in the colony, whereas English merchants are not commonly domiciled in India. But it is understood that these provisions of the existing law are seldom, if ever, made use of in practice, and that if there are assets in England concurrent proceedings are invariably instituted there. The loss therefore would appear to be of no practical importance. In any case it is certain that we cannot postpone the amendment of our law indefinitely in the somewhat distant hope that Parliament may some day pass an Act to give direct effect in the United Kingdom to Indian insolvency proceedings.

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"If this motion be carried, my Lord, and the Bill be published and circulated, it will, I trust, receive the careful consideration of the lawyers and the merchants of the Presidency-towns and Rangoon. It will perhaps be objected by some among them that the Bill makes too great a departure from the existing law; but I would anticipate that objection by observing that it is not possible, or at least that I have not found it possible, to build up an efficient structure on the antiquated foundation of the present Act. The Government of India agree with the Chambers of Commerce and those who were consulted in 1885 that there must be a new law. The subject is an intricate one and on points of detail there is certain to be a considerable difference of opinion; but if the main lines on which this Bill is framed are accepted, then it should be possible to come to some agreement on the less important points and to pass the Bill into law in the course of the next Calcutta session."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS introduced the Bill.

The Hon'ble MR. RICHARDS moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

The Council adjourned to Friday, the 27th March, 1908.

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.

CALCUTTA ;
The 20th March, 1908. }