

*Friday,  
12th March, 1909*

**ABSTRACT OF THE PROCEEDINGS**

**OF THE**

**Council of the Governor General of India,**

**LAWS AND REGULATIONS**

**Vol. XLVII**

**April 1908 - March 1909**

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OF  
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

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VOLUME XLVII



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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 12th March 1909.

P R E S E N T :

- 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 Edward Norman Baker, 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 Sir. H. Erle Richards, K.C.S.I., K.C.
- 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 G. D. F. Wilson, K.C.B., K.C.M.G.
- The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.
- The Hon'ble Mr. A. A. Apcar, C.S.I.
- The Hon'ble Nawab Bahadur Sir Khwaja Salimulla of Dacca, K.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. N. C. Macleod.
- The Hon'ble Mr. J. Andrew.
- The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.
- The Hon'ble Mr. F. A. Slacke, C.S.I.
- The Hon'ble Mr. J. M. Holms, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MR. DADABHOY asked:—

“ Has the Government received a memorial from the malguzars of the Central Provinces, praying for longer period settlements and more moderate

[*Mr. Dadabhoy ; Mr. Miller ; Sir G. F. Wilson.*] [12TH MARCH 1909.]

assessments? If so, has the matter been decided? In view of the generally impoverished condition of the malguzars and the successive famines, will the Government be pleased, in consultation with the Hon'ble the Chief Commissioner, to provide at the forthcoming renewal for thirty-year settlements, and to allow the malguzars a higher percentage of profits than in previous settlements?"

The Hon'ble MR. MILLER replied :—

"The memorial referred to by the Hon'ble Member has not yet reached the Government of India.

"The Government have no reason to believe that the malguzars generally are in an impoverished condition. The Central Provinces have suffered severely from famines, but the effect of these famines was carefully watched in the districts affected, and liberal measures of relief were adopted where necessary. In some districts a considerable abatement of the land-revenue demand accompanied by a reduction of rent was given, while in other districts the existing settlement term was prolonged and re-settlement operations postponed until the tracts had fully recovered from the effects of the famine. Any representations that may be submitted through the Chief Commissioner on the subjects mentioned in the last part of the question will be fully considered. The Government of India are not prepared without such consideration to give any such pledge as the Hon'ble Member asks for."

The Hon'ble MR. DADABHOY asked :—

"Is the Government aware that in the Central Provinces the Government Treasuries do not afford facilities for the exchange of the currency notes of different circles? In view of the steady commercial progress and the advancement of the people of the Central Provinces during the past few years, and particularly the great inconvenience experienced by the numerous Coal and Manganese Companies, Mills, Factories and Trading Associations, will the Government be pleased to establish either a Paper Currency Office or a Currency Exchange in Nagpur in order to afford greater facilities for commercial operations?"

The Hon'ble SIR G. F. WILSON replied :—

"Government have already under consideration measures to improve the system of its note circulation and hope that Nagpur in common with other internal centres of trade will benefit by the changes made."

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The Hon'ble MR. DADABHOY asked :—

“ Is it a fact that the gross receipts from Railway earnings have fallen off this year to the extent of nearly three crores of rupees, and the working expenses have increased by a crore-and-a-half? If so, will these facts be taken into consideration in making allotment for Capital Expenditure on Railways during 1909-1910?”

The Hon'ble MR. HARVEY replied :—

“ The gross receipts from Railway earnings have fallen off this year to the extent of about 109 lakhs below the actuals of the past year, and the working expenses have increased by 204 lakhs over the actuals of the past year.

“ The amount of Capital to be expended in any year on Railways is no fixed with immediate reference to the results of working of the previous year.”

The Hon'ble MR. DADABHOY asked :—

“ Will Government be pleased to enlighten the public on the causes to which the fall in the one case and the rise in the other can respectively be ascribed?”

The Hon'ble Mr. HARVEY replied :—

“ The causes of the falling off in receipts and the increase in expenses will as usual be fully explained in the Financial Statements and in the Memorandum by the Railway Board on Railway working for the year which will shortly be laid before Council and published in the Gazette of India. Briefly it may be said that the decrease in Revenue is due to general depression in trade and to local famine conditions. The increase in working expenses is due principally to larger renewals of Permanent Way and Rolling-stock, repairs of extraordinary flood damages, scarcity allowances to staff, abnormal empty running resulting from abnormal trade conditions, and increased cost of coal.”

The Hon'ble MR. DADABHOY asked :—

“ Has the attention of Government been drawn to an article published in *Indian Engineering* of 2nd January last, condemning in strong terms the treatment of third class passengers on Indian railways, especially the following passages :—

‘ The whole treatment of third class passengers throughout the country is indefensible in any serious reckoning of railway responsibilities .....It is not so much in the station latrines and lavatories, but in the cars that humanity is sometimes outraged.

[*Mr. Dadabhoy; Mr. Harvey; Mr. Gokhale; Sir* [12TH MARCH 1909.]  
*Harvey Adamson.*]

‘Notwithstanding the provisions of what is known as the “Sardines section” of the Railway Act, which distinctly prohibits luddling, not only are passengers permitted to stuff compartments beyond their assigned accommodation, but railway officials have often been known, and can always be seen, to thrust passengers into well-filled carriages to their own manifest suffering and that of others already penned in.’

“Do the evils pointed out in the article exist? If so, what action does Government propose to take for their prevention?”

The Hon'ble MR. HARVEY replied :—

“The article in *Indian Engineering* from which three extracts have been quoted on the question has been read.

“Crowding in trains does and must occasionally occur in this as in other countries, especially at times of festivals or other large public concentrations.

“Railway Administrations are fully aware of their responsibilities in this matter, and Government have no reason to doubt that every reasonable endeavour is made by them to deal efficiently with the passenger traffic offering at all times, and Government Inspectors have instructions to pay special attention to the conditions under which third class passengers are carried on the various railways.

“Moreover, the principal Railway Administrations have spent during the past few years, and are still spending, large sums of money in building third class carriages of an improved (bogie) type, which add considerably to the comfort of the Indian passenger. In the circumstances Government do not propose to take any further special action in the matter.”

The Hon'ble MR. GOKHALE asked :—

“Have the Government of India received from the wife of Babu Ashwini Kumar Dutt of Barisal, one of the nine Bengalee gentlemen recently deported, a memorial drawing the attention of the Government to the report that her husband is seriously ill and praying for his restoration to home and liberty?”

“Is it a fact that Babu Ashwini Kumar Dutt is seriously ill?”

“Are the Government now in a position to state how long they propose to keep Ashwini Babu as also the other deportees under restraint?”

The Hon'ble SIR HARVEY ADAMSON replied :—

“The Government of India have received the memorial mentioned in the question. It is not a fact that Babu Ashwini Kumar Dutt is seriously ill. On the 4th March the Medical Officer in charge of the jail in which this State prisoner

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is confined reported that his health has continued to be very good and that he has gone up in weight since he was received in the jail.

“The Government are unable to make any statement regarding the release of the State prisoners.”

### PRESIDENCY-TOWNS INSOLVENCY BILL.

The Hon'ble SIR ERLE RICHARDS moved that the Report of the Select Committee on the Bill to amend the Law of Insolvency in the Presidency-towns and in the Town of Rangoon be taken into consideration.

The motion was put and agreed to.

The Hon'ble SIR ERLE RICHARDS moved that the Bill, as amended, be passed.

The Hon'ble MR. DADABHOY said:—“My Lord, I desire to say a few words today as I had the privilege of serving on the Select Committee, and had the good fortune of being associated with the Hon'ble the Law Member in the preparation of this important measure, though I must confess I have played an insignificant part. The Committee had the expert advice and guidance of the Hon'ble Mr. Macleod, whose extensive knowledge of the practical working of the English Statute in an important commercial city like Bombay was of immense service to us; we had, besides, the inestimable advantage of the erudition and skill of the Hon'ble Law Member whose exactitude and precision in drafting are unrivalled, and but for whose masterly grasp of the varied and complicated details of the English Bankruptcy Act we should not have been in a position to present so complete and self-contained a Bill to this Council.

“This Bill is one of the most important measures of legislation undertaken by this Council for many a year, and I have no hesitation in congratulating the public, especially the commercial public, of this rising Empire with an expanding trade on their being given a suitable and workable Insolvency Act. The Bill is of a highly technical nature, and the most gratifying feature of it is that many difficulties have been overcome and complexities have been simplified, and the public will now have an Act in no way less complete and comprehensive than the English Bankruptcy Act. I have great pleasure in supporting the revised Bill which now embodies the numerous useful suggestions made

by the several High Courts and influential commercial bodies and organizations. The amended Bill ought to be received favourably by the public, as the provisions are suitable and framed in the light of the experience gained by the working of the old Act during a long series of years.

“ But, my Lord, though I support this Bill, I confess it is with some degree of reluctance that I have become party to the substitution of an Indian Act for an Imperial Statute. In my opinion, so far as the Presidency-towns are concerned, it is necessary and expedient that the Insolvency Law should be an Imperial Statute. It is very desirable that the law for the administration of property of insolvent debtors in Presidency-towns should be passed directly by the Imperial Parliament. But for the proverbial apathy and indifference of the House of Commons for any legislation affecting India, this Council should never have undertaken the preparation of this Bill. Indian interests and vital questions affecting the political and commercial affairs of this vast and growing Dependency, unfortunately, trouble very little English statesmen. This apathy is a regrettable feature of English Parliamentary life. The Indian law, as embodied in the Act of 1848, is on the same lines as the English Acts before 1869, which were superseded by the Bankruptcy Code of 1869, which in its turn was substituted by the more comprehensive and elastic Act of 1883. The present law is thus behind the times by half-a-century, and though admittedly ineffective and out-of-date it is surprising that the task of supplying a suitable law was not till very recently undertaken. Sir James Stephen's Bill of 1870 was withdrawn, because it was too ambitious in its scope, and was intended to apply to the whole of India. Sir Courtenay Ilbert's attempt in 1886 to give a comprehensive Act to India proved abortive, because the Select Committee to which it was referred was of opinion that it was too complicated to suit Indian conditions, but was neither willing to suggest modifications nor to undertake the preparation of a suitable Bill. It was then shelved till last March, and, my Lord, it is due to your incentive and the general animation pervading Your Excellency's administration that this difficult measure, which the Imperial Parliament has so long neglected, has again come up on the tapis, and has assumed a shape which ought to command general assent.

“ But, my Lord, as pointed out above, the proposed legislation might be open to objection from one point of view. An Indian Act is, after all, going to be substituted for an Imperial Statute. That is not merely a sentimental objection; it is one founded in reason. It is a matter of no small importance that a discharge granted by Courts in India should operate as a conclusive discharge in respect of all debts provable in the insolvency proceedings in this



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country ; for instance, a debt contracted in England should be fully covered by an order of discharge passed by an Indian High Court. Again the sea-borne trade of a city like Bombay is fast expanding, and Bombay traders enter into direct commercial relations not only with merchants doing business in England, but also in Mauritius, Africa, Penang, Shanghai, Hongkong and other distant ports, and the Bill now before this Council will not be as effective in its operation for the purpose of securing for the official assignee immoveable and other valuable property of insolvents situated in other parts of the British possessions as the present Imperial Statute. A vesting order made under the Act of 1848 now in force immediately vests in the official assignee by direct operation the whole of the property and effects of the insolvent in whatever part of His Majesty's extensive dominions they may be situate or accrue ; and likewise a discharge made under that Act takes effect in every part of the British Empire. In the Statement of Objects and Reasons of the Bill it is remarked that the advantages conferred by the Act of 1848 are of *no real value*, since experience has shown that in practically every case in which there are assets in both countries concurrent proceedings are instituted in England and India. The Hon'ble Member in charge of the Bill, in presenting the Report of the Select Committee, also stated to this Council that on comparison of the effect of an adjudication order under the Act of 1848 with the effect of an adjudication order under the Bill the advantages of an Imperial Statute would appear to be of small practical value. I hope my Hon'ble friend will bear with me if I am not able to wholly reconcile myself to that view. The advantages of having an Imperial Act are obvious, and cannot be gainsaid ; and though it is true that in many cases concurrent proceedings are promptly instituted in England and in this country, I venture to assert that the official assignee in this country is in a distinctly more favourable and unassailable position by reason of his drawing his authority from an Imperial Statute than if he were merely deriving his power to act under a Statute of the local legislature, which is necessarily limited in its operation to British India only. The present Bill when passed into law will certainly bring about some inconvenient results in so far as the immoveable property of insolvents situate outside the limits of British India is concerned. It will be difficult to get at the assets of foreign merchants trading in India and investing in real property outside British India ; likewise debts, securities and mortgages due to the insolvents outside British India will not be very easily approachable as under the present Act. An insolvent again, obtaining his discharge in any Presidency-town, will be liable to constant and vexatious persecutions outside British India. The valuable provision of the present Act whereby the vesting order

*ipso facto* operates as a statutory transfer of immoveable property within any part of the British Empire is lost in the Bill under discussion. Henceforward the official assignee will have to call in the aid of section 118 of the Bankruptcy Act for an order which would make the Indian vesting order effective as regards immoveable property lying outside the limits of British India, provided the vesting order purports to deal with such assets; but even in that case his title must date from the order made by the Bankruptcy Court and abundant opportunities will thus be afforded to a dishonest insolvent to dispose of his property in the interval. We must, however, accept this Bill as practical men, and make a virtue of necessity. We must be content to forego the advantages of the present Act in view of the somewhat extensive application of section 118 of the English Bankruptcy Act of 1883; and in order to gain the end more effectively, we have incorporated section 126 with the object of declaring all British Courts exercising Insolvency jurisdiction to be auxiliary to one another. Section 126 of the Bill is thus not a wholly inadequate set-off against the distinct and important advantages that we are going to lose by the repeal of the Act of 1848. My Lord, to be fair, I must state that it is not a case of absolute disadvantage or loss. The Bill under discussion has some distinct merits which the old antiquated Imperial Act does not possess. It is decidedly an improvement on that Act. It is modelled on the present English Law of Bankruptcy; it removes disabilities and defects; it provides a more effective and suitable machinery for compelling insolvent debtors to make a full disclosure of their assets and liabilities, and complete and drastic means for reaching and recovering property improperly concealed or disposed of by them. Creditors have been given not only a voice in the preliminary investigation, but have also been given extensive rights of putting debtors into Court before the assets have been made away with, and are, further, associated in the management and distribution of the assets. Moreover, means have been provided for the recovery without serious trouble of the insolvent debtor's property collusively and fraudulently held by third parties, and the official assignee has been invested with powers relating to the conduct of the insolvent and the administration of his property which must inure to the benefit of all parties. The official assignee will thus be every way in a more advantageous position under the present measure than under the Act of 1848, while any possible misuse of the larger powers and privileges by that official is effectively guarded against by the limitations requiring him to act in the light of day and in the presence of the general body of creditors. The provisions in the Bill about composition mark a distinct advance. Proposals for composition must be circulated among the creditors, and after they have been considered by the official assignee, it will

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not be open, as in the existing Act, to a small number of recusant creditors to disturb the arrangement, and to dictate their own terms. Under the Bill the voice of the majority will prevail. In short, the Bill offers ample protection to an honest insolvent who has come into trouble through the vicissitudes of fortune, at the same time that it places in the hands of the Court necessary means for the prompt and effective punishment of dishonest adventurers. The language is clear, and judges and lawyers will have less difficulty in interpreting and administering the law. The Bill is decidedly less cumbrous and verbose than the existing Act. The underlying principle is different. Unlike the Act of 1848, the Bill aims at the protection of the interests of creditors, whereas the principal function of that Act has been to relieve insolvent debtors and to leave honest creditors at their mercy.

“The Bill may therefore be safely passed into law, and left to work out its own destiny. Meanwhile, I shall, in common with the Hon’ble Law Member and many of my colleagues, cherish the hope that the Imperial Parliament will see its way in the near future to pass an enabling Act for the extension of the scope and operation of the Indian Act.”

The Hon’ble MR. MACLEOD said:—“My Lord, for nearly forty years the question of amending the law relating to Insolvency in India has been more or less under the consideration of Government. It has been generally admitted that the law required amendment, but the difficulties in the way have been of an extremely intricate and technical character. This subject must naturally be of the greatest importance to the commercial community, and it is due to my learned and Hon’ble friend the Law Member that all obstacles have been removed and that the persistent demand for reform has at last been satisfied.

“The first step was to provide the Mufassal with a simplified form of Insolvency Law. That was effected by the passing of the Provincial Insolvency Act, 1907, and it then became imperative that the Insolvency Law in the Presidency-towns and Rangoon should be brought up to date. Accordingly, this Bill was introduced and has now reached its final stage before the Council. Shortly, it is based on the English Bankruptcy Acts of 1883 and 1890, adapted with the greatest possible consideration for the special conditions which exist in India. The administration of the English Bankruptcy Law has recently been subjected to an exhaustive enquiry before a Special Committee appointed by the Board of Trade, and the report of the Committee forms a striking testimony to the general efficiency of those Acts. The Committee reported that the evidence and documents placed before them did not disclose any dissatisfaction on the

part of the commercial community with the main features of the existing law and procedure; the matters of complaint and suggestions for reform of the law with which they had to deal had principally related to special incidents of the law and branches of its administration.

"It cannot be said that any great changes in the existing law are recommended, but the Select Committee have carefully considered that report and have incorporated in the Bill such few of the suggestions for reform as appeared suitable to Indian conditions.

"Since that report was published, the Right Hon'ble President of the Board of Trade was waited on by a deputation representing the Association of Chambers of Commerce and the Association of Trades Protection Societies, which asked for the introduction of a Bill to amend the existing Bankruptcy Law. As far as I can gather from the newspaper report, the deputation had only four principal points to urge. Two are provided for by the Bill before this Council, the other two were comparatively unimportant and impracticable to adopt as regards India. At any rate this would go to prove that the commercial community in England can find but few suggestions to make for the improvement of the English Acts on which this Bill is based.

"In the note which I was allowed to annex to the report of the Select Committee I have dealt in detail with the advantages which will be secured by passing the Bill, but there are one or two points which I should like to emphasise more clearly. The present Act is entitled an Act for the Relief of Insolvent Debtors. Creditors receive very little consideration. Some people think they are not entitled to much. The Right Hon'ble President of the Board of Trade, when replying to the deputation I have just referred to, is reported to have said: 'The creditor in bankruptcy is not a public benefactor. The mere fact of his being a creditor shows that he has been guilty of misplaced confidence. He has made an error of judgment and is not so much entitled to State protection as some people claim. If he has lost by unsuccessful trading, he must reap the result of his own act.' If that view were correct no one would give credit for fear of making bad debts, then there would be no insolvency, neither would there be any trade.

"The real point is that when an order of adjudication is made against a debtor either on his own or on a creditor's petition, his creditors are deprived of the ordinary remedies which otherwise the law would have allowed them to pursue, and have to depend on the Insolvency Laws to protect their interests. Under such circumstances, it is the duty of Government not only in the

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interests of creditors but also of the whole community to provide the Courts and their officers with the necessary powers to exercise complete control over the conduct and affairs of insolvent debtors. In this respect the Act of 1848 is lamentably deficient.

“For while the provisions for the discovery of an insolvent’s property are inadequate, the burden of proving misconduct and opposing an insolvent’s application for discharge is thrown entirely on the creditors. The official assignee is merely a collector of assets, he has neither the right nor the means to intervene. I attach the very greatest importance to the reform it is proposed to effect by the Bill with regard to these two points.

“As to the first, it is proposed to give the Courts the widest possible powers to compel the discovery and production of an insolvent’s property. This may not always prevent the successful concealment of property, but legislation can go no further.

“As to the second point, clause 79 provides that the duties of an official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate. It will be the duty of the official assignee to report to the Court on the conduct of every insolvent who applies for his discharge. The official assignee’s report will be *prima facie* evidence of the statements contained therein and the onus will lie on the insolvent to rebut them. Even if an insolvent declines to apply for his discharge, the Court can direct the official assignee to report in any case in which he is of opinion that an offence under the Act has been committed.

“The result will be that offences under the Insolvency Law will no longer pass unnoticed. At the hearing of applications for discharge the time of the Court will be saved, and a serious burden on creditors will be removed.

“On the other hand, while the conduct of each insolvent will be officially scrutinized, the procedure whereby a man who has become insolvent through no fault of his own can get an absolute discharge has been very much simplified. Such an insolvent will be able to get protection for his after-acquired property as easily as he can now get protection for his person only. The present law regarding after-acquired property may in many cases work very harshly. Few insolvents go to the trouble and expense of a second hearing to get absolute protection for their property, and even then, if judgment has been already entered up, their property is never safe from execution. The Bill provides that judgment cannot be entered up against an insolvent unless one or more of certain facts have been

proved against him. Another great improvement will be effected by enabling insolvency proceedings to be taken by or against a firm in the name of the firm.

My Lord, however much care is exercised in framing a measure dealing with insolvency, it is inevitable that complaints will always be forthcoming from persons who suffer from the pecuniary misfortunes of those with whom they deal. Delays in realising insolvents' property must occur, opportunities for the successful concealment of assets will exist, and the administration of insolvent estates must be accompanied by a certain amount of formality and expense, but I am in hopes that this Bill will enable insolvency administration to be far more efficient than it can ever be under the present Act.

"No doubt cases will occur in which a vesting order or an order of discharge will not have so far-reaching an effect as under the Act of 1848. This can be remedied by an Imperial Act, but I have endeavoured in the note referred to above to show that the advantages to debtors as well as creditors to be obtained under the Bill altogether outweigh any loss that may be entailed by the repeal of the present Act. The loss is problematical, the advantages are real. The Hon'ble Mr. Dadabhoy is afraid that the official assignee will not be in such an advantageous position as he is now when seeking to recover assets outside British India. I do not share his fears. I claim that all the points raised by the Hon'ble Member have been met by my note. My experience in the case of assets situate in Hong Kong or in any of the other British Colonies referred to by the Hon'ble Member is that almost invariably the domicile of the insolvent is Indian and the assets are moveable, so that the Indian vesting order will for all practical purposes operate in such cases as efficiently as hitherto.

"The official assignee must always be at a disadvantage if he has to take proceedings which he cannot personally superintend in a Foreign Court. One must assume, however, that the general principles of private international law will be recognized by other British Courts and due effect given to section 118 of the English Bankruptcy Act of 1883. I do not anticipate therefore that the official assignee, if he has to seek the assistance of such Courts, will be in any worse position than he is now.

"But I should also like to point out that it is just in those cases that we are brought in contact with Insolvency Law in other parts of the British Empire and that the disadvantages of the Indian Insolvency Law not being in line with that law are most apparent. Moreover, it is taking a very narrow view of the subject to rivet the attention to what may happen in a particular case. Rather

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we should consider whether the old or the new legislation is the most efficient and best answers the requirements of the community.

“ My Lord, I may claim to have had considerable experience in the actual working of the present Act, and during the last few months I have had ample opportunities of testing this question from every point of view. I am satisfied that in passing this Bill we shall be effecting a very necessary and long called for reform.”

The Hon'ble SIR ERLE RICHARDS said :—“ The Council have heard the speeches of my two Hon'ble Colleagues, and their opinions are, I submit, a sufficient warrant for this motion. The Hon'ble Mr. Macleod speaks with wide practical experience gained as Official Assignee of Bombay; he knows the defects of the existing law and is confident that this Bill will effect a valuable reform. My Hon'ble and learned friend Mr. Dadabhoy, a lawyer of experience, joins in commending the Bill and points out that it has received the assent of the commercial communities of India.

“ The Hon'ble Mr. Dadabhoy devoted some portion of his speech to a point which has been discussed in this Council on more than one previous occasion, as to the disadvantages of giving up the Imperial Statute from which our present law of insolvency derives its authority. The Hon'ble and learned Member is enamoured of this Bill, but he cannot quite make up his mind to break with the past: he is on with the new love, but he is not completely off with the old. He is anxious that this Bill should step into the Statute-book, but he views with regret the departure of the present Act which it must displace. This question has been examined in detail in the Report of the Select Committee and in the papers appended to that Report. We may differ as to the exact degree of loss we must suffer from the fact that vesting orders and discharges under Indian insolvencies will no longer, if this Bill be passed into law, have the same effect of themselves outside British India; but we are all united, and as my Hon'ble and learned friend says, all practical men must be united in recognising that, whatever these disadvantages may amount to, the advantages to be gained by the substitution of the new law over the present out-of-date enactment, altogether outweigh them. Therefore I ask this Council to carry this motion unconditionally and to pass this Bill without reference to the possibility of obtaining an Imperial Act to supplement it. At the same time, my Lord, I desire to state on behalf of the Government of India that they have carefully considered the argument in favour of having an Imperial Statute and that they are prepared to request the Secretary of State to consider

[*Sir Erle Richards.*]

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the matter, and if he be so advised to ask the Imperial Parliament to pass a short Bill to give effect to Indian vesting orders and discharges in the British Empire outside India. That is the position under the present Act, and it is only fair, as it seems to us, that we should be put in the same position under this Bill. It may be said that an Act of this Council will have the same effect as the Bankruptcy Acts of other Colonial Legislatures, and that we cannot fairly claim to be in a better position than other parts of the British dominions. But our answer to that is that in India we are already in a more favourable position and that we are only asking Parliament to maintain the existing position. We do not ask them to enact a new Act for us, that would be unreasonable; but we do ask them to give the Act which we are about to pass the same effect as the present law has. We hope that we shall succeed in our request, but we hold that this Bill, even if it be not supplemented by Imperial legislation, will effect a marked improvement in the law, and we recommend you to enact it independently of that consideration.

“During the past few days I have received petitions from various Associations representing vakils and pleaders asking that the Bill may be amended in order to give them a right of audience in insolvency matters, a right which they do not at present possess. Changes of this kind, my Lord, are not easy to make; they involve interference with vested interests, and at best they cannot be made at the eleventh hour; they require the fullest consideration. The Bill provides for the maintenance of the existing state of things, and I think the Council will be wise to adhere to that.

“My Lord, I have little more to say. The lot of a Legal Member in this Council is a hard one; it is almost always his duty to speak on measures of a character so technical that it is impossible to invest them with any general interest. During the past few years we have passed Acts in this Council dealing with the subjects of Civil Procedure, Provincial Insolvency, the Limitation of Actions and the Registration of Documents. These are all matters of legal importance, but they are none of them subjects on which it is possible to arouse general enthusiasm. Today, the last occasion on which I shall have the honour of addressing this Council, my task is even worse, and I confess that it is beyond my powers to discuss the provisions of this Bill in such a way as to make it of interest to my Colleagues. I content myself with claiming for it that it will effect an important and much-needed alteration of the law. It is in the interests of the State that commercial transactions should be maintained at a high level of honesty, and that the law should give sufficient powers to prevent fraudulent trading. The Bill will do much



[12TH MARCH 1909.] [Sir Erle Richards ; the Commander-in-Chief.]

to accomplish this object, and it is for that reason that I ask the Council to pass it into law."

The motion was put and agreed to.

### AMENDING (ARMY) BILL.

His Excellency THE COMMANDER-IN-CHIEF moved for leave to introduce a Bill to amend certain enactments relating to the Army. He said :—" The Amending (Army) Bill I have the honour to propose to introduce is of an entirely formal character rendered necessary by recent changes in the ranks and designations of Generals Commanding in India. Advantage has, however, been taken of the introduction of this Bill to remedy certain defects in our military laws :

- (1) regulating the admission of soldier lunatics to asylums ;
- (2) giving power to the Commanding Officers of Volunteer Corps to remove the names of those members who have become non-effective from the roll of their corps ; and
- (3) affording better control over the sale and supply of spirituous liquors or intoxicating drugs in cantonments.

" These three amendments to the law have been dealt with in the Statement of Objects and Reasons attached to the Bill."

The motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF introduced the Bill.

His Excellency THE COMMANDER-IN-CHIEF moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in English in the Gazette of India and in the local official Gazettes.

The motion was put and agreed to.

The Council adjourned to Monday, the 22nd March 1909.

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

CALCUTTA ;  
The 12th March 1909. }