

Wednesday, September 27, 1865

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 4

JAN. - DEC.

1865

P. L.

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 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 27th September 1865.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, *presiding*.

His Excellency the Commander-in-Chief.

The Hon'ble W. Grey.

The Hon'ble G. N. Taylor.

The Right Hon'ble W. N. Massey.

The Hon'ble Colonel H. M. Durand, c. B.

The Hon'ble W. Muir.

THE INSOLVENT TRADERS' ESTATES LIQUIDATION (BOMBAY) BILL.

MR. GREY moved that the Bill to provide for the more speedy liquidation of Insolvent Debtors' Estates in Bombay, be taken into consideration. He said that the Bill had been forwarded by the Bombay Government. That Government had received it from the local Chamber of Commerce, accompanied by a Memorial, which appeared to be signed by all the most influential firms and banking establishments in Bombay, praying that the necessity of speedily passing such a measure might be represented to the Governor General in Council. The Bill was limited in its operation to estates in which the admitted liabilities were not less than five lakhs of Rupees. Its object was to apply, as far as might be, the winding-up provisions of the Joint Stock Companies' Act (XIX of 1857) to the liquidation of private estates, and at the same time to continue the penalties of the Insolvent Act against fraudulent or reckless trading. It had been prepared by Mr. Scoble, an Officer of the Bombay High Court, in conjunction with two gentlemen nominated by the Chamber of Commerce; and it had been submitted to the revision of the Chief Justice of that High Court, by whom it was believed to be sound in principle and workable in detail.

When the Bill first came before the Council, it was thought desirable to bring to the notice of the Governor in Council at Bombay, some details which seemed to require amendment or a fuller definition of their objects. In the first place, the Bill containing no provisions (corresponding to those of Sections 102 and 105 of Statute 24 & 25 Vic., cap. 134) for the levy of a stamp on applications to the Court, it seemed expedient that the Bill should conform in this respect to the

model of the English Act. In reply to a despatch containing this and other suggestions, the Bombay Government forwarded a letter from Mr. Scoble, written after communicating with the Chief Justice on the subject, in which Mr. Scoble represented that the special stamp referred to in the English Act, was a stamp on Trust Deeds registered under that Act, and no Trust Deed was contemplated in the Bill. "Besides," continued Mr. Scoble, "no provision is made for the levy of stamp duties on proceedings under either the Indian Joint Stock Companies' Act or the Indian Insolvent Act; nor are fees in the High Court levied as yet in the shape of stamps." He (Mr. Grey) did not think that any of these reasons would be conclusive against imposing the stamp, if that measure were in itself desirable; but on further consideration, he did not think it expedient to require the stamp. For the 17th Section of the Bill empowered the Insolvent Court, on application by a majority in number and unsecured value of the creditors of any insolvent who had filed his petition, to order that his estate should be wound up by trustees, "upon such terms as to costs and remuneration to the Official Assignee," as should appear to be necessary. He (Mr. Grey) supposed that practically this provision would apply to all estates coming under the operation of the contemplated Act: they would thus all pay toll to the Official Assignee, and it was therefore undesirable to impose any additional burthen upon the creditors.

The next suggestion was, that the word 'unsecured' should be omitted from the 4th and 17th Sections of the Bill—no similar expression being found in the corresponding part of the English Statute, and the insertion of the word in question being therefore likely to give rise to doubts and difficulties. To this, Mr. Scoble replied that the word was designedly introduced, because of the conflict of judicial opinion which had arisen in England in consequence of the omission of that word from the 185th and 192nd Sections of the English Act. The intention was to exclude creditors, so far as they were secured, from participation in the proceedings contemplated by the Bill, for the simple reason that, being secured, they had no interest in the other assets of the trader. This answer he (Mr. Grey) considered quite sufficient.

The next objection was, that the use of the expression "*beneficial* liquidation," in the third Clause of the 9th Section, and the apparently unlimited power which the last Clause but two of the same Section gave the trustees to draw, accept, and endorse Bills of Exchange, &c., seemed to furnish them with the necessary means of continuing the business of the insolvent estate, and to leave it at their option to do so, instead of winding it up with the speed which it was the object of the Bill to secure. The Governor General in Council therefore proposed to omit the word 'beneficial,' and to add to the seventh Clause, some such words as the following:—"so far only as is necessary for the purposes of this Act." In reply to

this, Mr. Scoble observed, that the 9th Section of the Bill was copied from the 89th Section of the Indian Joint Stock Companies' Act. That certainly was the case. He deprecated the omission of the word "beneficial" as being a word of limitation. He was willing, however, to add the words "whenever the same shall be necessary for the purposes of this Act."

The only remaining objection was as to the provisions for remunerating the trustees: he (Mr. Grey) had always doubted the soundness of that objection, and in his opinion it had been satisfactorily answered by Mr. Scoble, who observed,— "In this respect also, the analogy of the Indian Joint Stock Companies' Act has been followed, which provides for the remuneration of official liquidators; and I entertain no doubt that, unless a similar provision be retained in this Bill, it will be almost impossible to get mercantile men to act as trustees, and the Act when passed will become a dead letter. If the objection of the Government of India is to the payment of trustees, it will be easy to obviate it by the substitution of the term 'Liquidators' for 'Trustees' throughout the Act. But Indian legislation has already provided for the payment of official trustees and executors in India, who stand in a similar fiduciary position, and receive remuneration for their services; and I therefore fail to perceive why trustees under this Bill, who will have very onerous duties to perform, should be required to render gratuitous services." To this, he (Mr. Grey) might add that the wording of the first part of the 20th Section of the Bill, was—substituting 'official liquidators' for 'trustees'—identical with that of Section 90 of Act XIX of 1857. It was better, therefore, to leave the Bill in this respect as it stood.

Lastly, the Governor General in Council had proposed to limit the duration of the Act to a period of two years, except as regarded those estates which had, within that time, come under its operation. No remark had been made by the Bombay Government on this point, and he (Mr. Grey) would therefore move the amendment to that effect, of which notice had been given.

The Right Hon'ble Mr. MASSEY said that he had made several objections to the Bill when it was introduced, and that he would be disposed to invite further discussion of those objections, if the measure was to apply to the whole of British India or to Bombay permanently. But as it was only to apply to Bombay, and to remain in force there only for two years, he did not now propose to occupy the time of the Council with debating the subject. He had doubts as to whether the Bill would work. That consideration, however, was for its promoters. The provision for the remuneration of the trustees he thought objectionable, and the cases of official trustees and executors (by the latter of which he supposed the Administrators General were meant) did not seem to apply, for the trustees under the Bill would themselves be interested in the estate.

MR. GREY remarked that the case of the liquidators appointed upon the voluntary winding-up of a Joint Stock Company, was some precedent for remunerating trustees, though personally interested in the estate. For, under the 95th Section of Act XIX of 1857, those liquidators, who might be creditors or shareholders of the Company, would be entitled to remuneration. An Administrator General, too, would be entitled to his commission, although in his private capacity he might be interested in the assets.

The Motion was put and agreed to.

MR. GREY also moved that the words " whenever the same shall be necessary " for the purposes of this Act," be added to the sixth Clause of the 9th Section ; and that the word " requisite" be omitted in the last line of the same Clause.

The Motion was put and agreed to.

MR. GREY also moved that the following be substituted for Section 27 of the Bill :— " This Act shall come into operation on the first day of October 1865, and " shall remain in force until the thirtieth day of September 1867. Provided that as " to such estates (if any) as shall, on or before such day, have been brought under " the operation of this Act, and of which the winding-up under its provisions shall " not have been completed, this Act shall remain in force until such estates shall " have been wound up as aforesaid."

The Motion was put and agreed to.

MR. GREY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept., (Legislative.)

SIMLA, }
The 27th September 1865. }