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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1881.

WITH INDEX.

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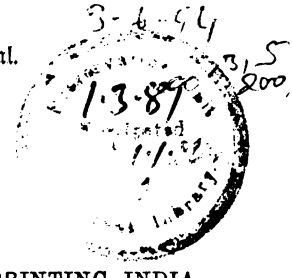

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1882.

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

The Council met at Government House on Friday, the 21st January, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., P.C., G.M.S.I., *presiding.*
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble J. Gibbs, C.S.I.
Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.
Major the Hon'ble E. Baring, R.A., C.S.I.
The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.
The Hon'ble C. Grant.
The Hon'ble J. Pitt Kennedy.
The Hon'ble G. C. Paul, C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble G. F. Mewburn.

BENGAL CESS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

The Hon'ble MR. STOKES also moved that the Report be taken into consideration. No change had been made in the Bill as introduced, and the Committee recommended that it should be passed.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

The Motion was put and agreed to.

INSOLVENT DEBTORS ACT AMENDMENT BILL.

The Hon'ble MR. KENNEDY moved for leave to introduce a Bill for the amendment of the law relating to Insolvent Debtors in India. He said that, in doing so, his suggestions were merely as to a few matters of detail which had been, in the practical working of the Insolvent Act, occasionally found inconve-

nient, possibly working injustice. The Insolvent Act in India was passed on the lines of the Insolvent Act of George IV, with a few provisions introduced from the Bankruptcy Act of that period, and it had not to any considerable extent followed the Insolvent and Bankruptcy Laws of England in the changes which have since been made. No doubt these changes had in many respects been found not advantageous, and, as the hon'ble members were all aware, at present, in England, a large and comprehensive reform of the Bankrupt Law seemed to be contemplated. But his propositions were very much more modest and merely applied to special points which he considered would tend to carry out the great principle of the Bankruptcy and Insolvency Laws, that is to say, providing for an equal distribution of the assets of the insolvent amongst his creditors.

The first change, he would suggest, was with regard to the operation of attachments and other processes in execution upon the property of the insolvents. As the law in England stood when these Acts were passed, attachments or processes in execution so far divested the property from the judgment-debtor that his subsequent bankruptcy or insolvency did not vest the attached property in the assignee, and thus any creditor might not unfrequently or improbably sweep away almost the entire assets of the insolvent. In England alterations in the law had been made which left the attached property subject to be distributed, at least until sale of the property and payment over of the produce of the sale. The Procedure Code in this country also seemed to have recognized the propriety of that equal distribution, and it was to carry out that principle that the first of the suggestions had been made. It was that attachment and execution should not divest the property from the debtor so as to prevent it vesting in the Official Assignee or the receiver under the Procedure Code, until the property had actually been sold, and the produce distributed.

A further provision had caused some little difficulty, inasmuch as, at the present moment, there was pending before the Appeal Court a question respecting it. From the earliest period, almost, of the Bankruptcy Law, provision was made by which persons who permitted traders to remain in the apparent possession of property which did not belong to them, but which did belong to the persons so permitting it to be held, those persons so permitting traders to have a false appearance of credit, caused by the property remaining in their hands, in case of insolvency, lost all power of retaining any right in the property, and it vested in the assignee. That provision had been continued in England from the Act of James I down to that of 1869—the last Bankruptcy Act passed in that country. It had been felt that for many reasons—not only on the ground of

unfairness to the general creditors having that appearance of credit allowed, but also because, in the case of insolvency, there was so much opportunity of setting up fraudulent deeds, making things safe as it were in the event of bankruptcy or insolvency—it had been felt for many reasons to be expedient to put a stop to such contrivances. But it had lately been decided in the Court of Appeal in England, that if one member of a firm, or several members of it not extending to the whole, became bankrupt, this provision did not come into operation, and there was a singularly strong reason for so holding, because, if the property were to pass to the assignee from any one insolvent, it would be in the first instance applied to the payment of his separate creditors and not to those of the firm in general, which would be a very curious result. In this country it so happened, at least in the case of European firms, that a considerable number of partners might be in this country, but it rarely happened that all were here, and therefore, in the case of insolvency here, the partner absent in Europe not being in a position to be declared insolvent, that particular provision would rarely if ever come into operation. It certainly did seem that so far as property was left in the hands of a firm practically insolvent, it might be applied in payment of joint creditors of the entire firm. This would be carrying out the original principle in enabling the general creditors to receive the benefit of property which was ostensibly that of the bankrupt, and yet prevent that inconvenient result to which he (MR. KENNEDY) had called attention. The object in such cases would be that the property should be applied in payment, not of the debts of the individual partners, but only so far as was necessary in realising the joint debts due from the firm.

Further, in the recent Procedure Code a provision was made for declaring a person insolvent in the Mufassal Courts. In the great mass of cases, persons who would be so declared insolvent, would be persons practically resident or carrying on business within the jurisdiction of the Court where the person declared himself insolvent. But it did so happen that a very large portion of the trade of Calcutta was carried on by various Native merchants, who were not resident here, but who carried on business through gumáshtas or managers, and it might well happen that it would not be long before fraudulently inclined traders would discover that a friendly creditor might proceed to take steps in insolvency in the Mufassal Courts, whilst the really large and important creditors were in Calcutta, and would have but little chance or opportunity of bringing forward their claims or interfering at all in the matter. It would be difficult for them to send qualified agents down to out-of-the-way parts of the country who would be able to look after their interests.

His suggestion was that the Insolvency Courts, where there were creditors in considerable numbers in the Presidency-towns, should have the opportunity and power, if they thought fit, to remove the Mufassal insolvency proceedings into the Presidency Insolvency Court.

MR. KENNEDY had yet again another suggestion:—there was an Act of the year 1841, which made provision for dealing with unclaimed dividends. In the aggregate these amounted to very considerable sums; but in individual cases, they were often extremely small and hardly worth any person's while to take the trouble of making applications for recovery. For instance, a man with a debt of rupees one hundred, when there was a declaration of a dividend of one anna in the rupee, would hardly in general think it worth his trouble to realise the amount; the dividend would be unclaimed, and, after a certain lapse of time, the intention was that it should be redistributed amongst the other creditors of the estate. However, the Act of 1841 was so complex, that it had practically become inoperative, and his (MR. KENNEDY'S) idea was to introduce a clause which would remedy the difficulty which had been felt in working out that particular provision. These were the general suggestions which he deemed necessary to lay before the Council.

The Hon'ble MR. PAUL, in supporting the motion for the introduction of the Bill, said that he desired to record his most hearty approval of the suggestions which had fallen from his hon'ble friend and colleague. The Insolvent Act had not been changed since 1849, and the Hon'ble Members were aware that the nature of business had altogether changed since the Act had been introduced, necessitating a great many alterations in the working of the Act. That, however, was a question which his hon'ble colleague did not profess to discuss this day; he only desired to amend the Act in a few important points. The clause, which was known as the order and disposition clause, had been found practically ineffectual in cases relating to absent partners, and the mischief against which the clause was directed was allowed to recur without the means of putting a stop to it, and it was for this reason that the mover had devised a clause to remedy the evil. As the law now stood, this order and disposition clause would have no effect whatever in the case of absent partners; and, while on the one hand his learned friend proposed to alter the law to meet some portion of the mischief referred to, he very properly guarded it by a qualification that the altered clause should not extend to the separate debts of the insolvent partners, but only to the partnership liabilities. In point of fact, no possible objection could be taken to this course. The provision was a most salutary one, and would be of great utility to the mercantile interests of Bengal. With regard to the other points, they were so

obvious in themselves that MR. PAUL did not consider it necessary to touch upon them; he only wished to endorse entirely the views put forth by his friend, and on the whole desired to support them.

The Hon'ble MR. STOKES said that he was sure the Council would gladly give leave to introduce a Bill to amend defects which the long practical experience of his hon'ble and learned friend Mr. Kennedy had enabled him to point out. MR. STOKES might add that the Secretary of State had recently called the attention of the Government of India to section 82 of the Insolvent Act, which, while imposing upon the Indian Government the duty of advertising in the *London Gazette* the notices of insolvency published in the official Gazettes in India, seemed to make no provision for the recovery from the estates of the insolvents of the costs of so advertising them.

These advertisements, it seemed, were inserted in the *London Gazette*, in the year 1878-79, at a charge against the India Office of no less than £425. It appeared to Lord Hartington that the charge was one which ought clearly to be defrayed by the estates to which the notices related. He therefore requested that the matter might receive the early consideration of the Government of India in communication with the Judges of the several High Courts, and that, if necessary, recourse might be had to legislation so as to ensure (so far as might be possible) the recovery from every estate of all costs, whether incurred in England or in India, attendant on the insolvency. But Mr. Miller, the Calcutta Official Assignee in Insolvency, had questioned the practicability of the Secretary of State's suggestion, inasmuch as in India, whatever the case might be at home, the majority of insolvency estates were wholly without assets after defraying the necessary court-fees, and Mr. Miller therefore thought the most convenient plan would be to repeal section 82 of the Insolvent Act, and require the publication in the *London Gazette* of those insolvencies only in which there were creditors in England, and that the cost of the publication should be defrayed out of the fees paid into Court by those estates. It seemed to MR. STOKES that the Secretary of State's suggestion and Mr. Miller's proposal might be considered in connection with the present Bill.

The PRESIDENT thought that the matter might fitly be brought before the Select Committee, to which, no doubt, the Bill would be referred.

The Hon'ble MR. GIBBS said, that he had had the honour of presiding for more than five years over the Insolvent Court at Bombay, and he was consequently able to testify to what his learned colleague had said of the difficulties of working the Insolvency Act, which was framed so many years ago. It would be in the recollection of some of the Council that Sir Fitz James Stephen, when

Law Member, introduced a Bill to amend the insolvency law. That Bill received a great amount of consideration from the different High Courts, but was dropped in consequence of the subject being a very difficult one, and considered too technical for the Mufassal. He had only just heard the suggestions for the amendment of the law, but, generally, he thought, the Act was capable of many improvements especially as regarded the last point which had been mentioned. Large sums of money remained invested as unclaimed dividends, and it was found that they were not claimed, simply to avoid the expense and trouble of applying for the recovery of small sums. These general observations were merely made to show why a measure of this kind should be introduced and carefully considered. Whether any other points should be added in Select Committee, he could not of course say; but he thought it probable that one or two other matters might be introduced to improve the administration of that particular branch of the law in India.

The Motion was put and agreed to.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES presented the fourth Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The report of the Indian Law Commissioners, 1879, had been duly communicated to the Select Committee. They had carefully considered so much of it as related to the present Bill, and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative), No. 37, dated 7th October, 1880, this fourth report was now submitted. As the report would be published with the Bill in the *Gazette of India*, MR. STOKES would only remark that they had adopted most of the recommendations of the Law Commission, not only as to the substance of the Bill, but also as to its arrangement and wording. The Committee recommended that the Bill as now revised be passed. It had been more than thirteen years before the Council of the Governor General; it had been redrawn, copiously criticised and repeatedly revised; and without the experience derived from its actual operation, it was not likely to be further improved. But it should be published in the Gazettes, and, according to the orders of the Secretary of State, it must, before being passed, be sent to the Local Governments, translated into the vernaculars and submitted to him with this report.

The Council adjourned to Friday, the 28th January, 1881.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 21st January, 1881.

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