

*Thursday,  
20th May, 1886*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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ABSTRACT OF THE PROCEEDINGS  
OF  
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA  
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*Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Viceregal Lodge, Simla, on Thursday, the 20th May 1886.

PRESENT :

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

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

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

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

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

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

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

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

INDIAN BANKRUPTCY BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Messrs. Evans and Steel, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik and the Mover. He said :—

“ Although I am now nominating the Committee on this Bill, I do not propose that the Committee should begin its sittings until after the Government has returned to Calcutta. But I hope it will be arranged that such further suggestions and criticisms as we may receive will reach us in ample time to allow of their being considered in the Legislative Department before we leave Simla, so that no time may be lost after our return to Calcutta.

“ I have already said that the Bill follows generally the arrangement and lines of the English Act, and I will take this opportunity of explaining the most important points of difference between the two measures.

“ The Indian Bill is given as extensive an operation, local and personal, as can be conferred on it by this legislature. In order to obtain for it further operation in Her Majesty's dominions beyond India we must go to Parliament: in order to obtain for it further operation in Native States within

India we must rely on executive arrangements with the rulers of those States. The Local Governments will, I feel sure, appreciate the importance of considering how far it may be practicable to make and give effect to such arrangements.

“ The acts of bankruptcy enumerated in the Indian Bill are not precisely identical with those specified in the English Act. It would not be desirable in India to make the mere levy of execution an act of bankruptcy. On the other hand, it is suggested in some of the papers on the draft Bill that it would be desirable to retain some of the acts of bankruptcy recognized in the existing Indian Act. I have adopted this suggestion, and have also made some further modifications of and additions to the corresponding English section which have been suggested by the working of the Act in England.

“ The Court will not ordinarily exercise jurisdiction on a bankruptcy petition unless the debtor is either in prison for debt within the limits of the ordinary original jurisdiction of the Court, or he or his partner resides or has a place of business within those limits. But for the purpose of empowering the Court, in exceptional cases, to deal with up-country debtors, I have qualified these restrictions by two provisos, of which the first enables the Court to transfer before itself and dispose of under the bankruptcy law any case of indebtedness which may have been brought before an inferior Court under the Insolvency chapter of the Civil Procedure Code; whilst the second empowers the Court in classes of cases to be defined by rules to exercise jurisdiction notwithstanding the restrictions imposed by the earlier part of the section. It will be for the High Courts to consider whether these provisos will suffice to give them the requisite power of dealing with such cases. I have myself some doubt about the necessity for the second proviso. And I do not contemplate that a High Court should, under it, attempt to deal with cases arising outside its own province. If, for instance, the High Court at Calcutta were to exercise jurisdiction in a Cawnpore case, it might bring itself into conflict with the High Court at Allahabad. Should it be found desirable to deal under the bankruptcy law with any classes of indebtedness arising at Cawnpore, probably the most convenient mode of doing so will be to confer on the Allahabad Court a bankruptcy jurisdiction subject to such limitations as may be found expedient. This could be done under section 79 of the Bill.

“ It has been suggested that the application of the Insolvency chapter of the Civil Procedure Code to the High Courts of the Presidency-towns should be barred. But it is possible that this chapter may still be needed for cases

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where the total amount of the debtor's liabilities does not amount to Rs. 500, and I think it will be sufficient to give full power to stay proceedings under the Code where concurrent proceedings are being taken under the Act. Such a power is given by section 9 of the Bill.

“ Under ordinary circumstances, where the petition is presented by the debtor, the Court will make an order as a matter of course, but it need not make an order in cases where in its opinion the proceedings ought to have been taken before some other Court having jurisdiction (section 7). Unless this qualification were made, a debtor against whom proceedings have, quite properly, been taken in Calcutta might, to the great inconvenience of his creditors, get himself adjudged bankrupt at Bombay by migrating and petitioning there.

“ The order to be made on a bankruptcy petition is in the Bill, as in the English Act, called a receiving order. The effect of a receiving order is not quite the same as that of a vesting order under the existing Indian Act. A receiving order transfers the possession of, but not the property in, the debtor's estate: the debtor is not divested of his estate unless or until he is adjudged bankrupt. An interval was designedly allowed by the English law for the purpose of enabling a debtor to escape the consequences of bankruptcy by making suitable arrangements with his creditors under the control and supervision of the Court; and although the adjudication of bankruptcy may, and in many cases will, follow immediately on the receiving order (see section 20), yet I think it is desirable that we should follow the English law by making it possible for an interval to elapse between the two stages. The person who is constituted receiver under the order, and to whom the possession of the debtor's property is given, is the official assignee, who, however, may appoint a special manager in cases where he thinks it expedient to do so.

“ One important effect of a receiving order under the Bill, as now revised, is that the debtor, if in prison for debt, is thereupon released. It might be objected that, inasmuch as an imprisoned debtor can obtain a receiving order on his own petition, this provision nullifies the law of imprisonment for debt. But if the Bill is carefully examined it will be found that this objection is not really valid. The state in which a debtor will find himself on being released from prison under a receiving order will be very far removed from a state of liberty. He will remain at the beck and call of the official assignee, who is invested with inquisitorial powers over his person and property, and on whom he has to dance attendance whenever required (see section 22). If he attempts to escape or evade the requirements of the law, he is liable to be summarily committed to prison. Such a situation, though inconvenient to persons fraudulently disposed, need present no terrors to the debtor

who is honestly anxious to assist in the realization and distribution of his estate, and will give a much better chance to the creditors generally than the present law, under which the debtor usually strikes a bargain with some favoured creditor as to the terms on which he is to obtain immunity from arrest or be released from prison if arrested. Precautions are also taken against allowing the proceedings to slumber after the debtor has obtained the protection given him by a receiving order. The Court has power either to rescind its order (section 88) or to give the carriage of the proceedings to the official assignee (section 91).

“ Under the English law the first step consequent on a receiving order is to summon a general meeting of the creditors. Under the Indian Bill such meetings need not be summoned except under directions from the Court or the official assignee or in pursuance of a requisition from a specified proportion of creditors (see section 17, and First Schedule, Rule 4). But the debtor is required to make at once full discovery of his estate and liabilities, and it will be then for the creditors to consider, with the assistance of the official assignee, whether any proposal which the debtor may make for a composition or scheme of arrangement should be entertained, or whether the debtor should not be adjudged bankrupt. The main provisions of the English Act with respect to the public examination of the debtor have been retained, and, although they may involve revelations which are not always pleasant to creditors, I think it is desirable in the interests of justice that they should be retained. We must be very careful against giving facilities to creditors for smothering up doubtful transactions.

“ Where a debtor is adjudged bankrupt, his property is thereby vested, not, as under the English Act, in a trustee appointed by the creditors, but in the official assignee, to whom possession will already have been given under the receiving order. If the creditors desire to substitute a special assignee of their own nomination, they must take proceedings for doing so under Part V of the Bill. But it would appear from what has been said by the Calcutta Judges that such proceedings are not likely to be of frequent occurrence.

“ The Official Assignee will not be assisted or hampered by any committee of inspection, but he will, as I have already said, be given extensive powers of inquisitorial control over the person and property of the debtor. I agree with Mr. Macgregor that such powers ought to be given, and I think he will find that the provisions of the Bill will be sufficient to remove the risks and impediments which the official assignee experiences in the performance of his

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duties under the existing law. If section 25 of the Bill is compared with the corresponding section of the English Act, it will be found that I have ventured to confer on the official assignee somewhat larger powers of discovery than are given by the English law.

“ The provisions of the Bill with respect to the bankrupt’s discharge—by which is meant his discharge from liabilities, not his release from prison—follow closely those of the English Act, with one or two modifications suggested by Indian circumstances. I think that for the purpose of obtaining recognition of our proceedings in other parts of the British dominions it is important that on this point the English and Indian law should be substantially identical.

“ I have added to the Bill a Part corresponding to Part II of the English Act, which disqualifies bankrupts for holding certain public offices. Similar disqualifications are already imposed by the several Indian Acts relating to municipal and other local authorities, but I think it is convenient that they should be gathered up and generalized in a Bankruptcy Act.

In Part III of the English Act, which contains the rules for the administration of the debtor’s estate, I have not deviated from the English Act except so far as is necessary for the purpose of meeting the peculiarities of Indian circumstances. Thus, the provisions as to execution are made to square with those of the Civil Procedure Code; the custom of paying rent monthly is recognised by limiting the landlord’s right of distraint after bankruptcy to one month’s rent; the language of one of the sections is so modified as to allow a debtor to retain, as necessaries, not only his clothes, bedding and tools, but the cooking-pot which is so indispensable to an Indian; and the power of attaching salaries and pensions is limited with reference to the provisions of the Civil Procedure Code and of the Indian Pension Act. The Calcutta Chamber of Commerce, in a paper which has only reached me within the last week, have renewed a suggestion which was made some years ago that the section relating to reputed ownership should be amended to meet a reported Calcutta case (*Gubboy v. Miller*, I. L. R. 6 Cal. 633). But I agree with the judicial authorities who considered the same suggestion in 1881 that it would be extremely dangerous to meddle with this very difficult clause, and that our safest course is to follow the English law. I am, however, disposed to agree with the Official Assignee at Calcutta that some further provision is required to prevent persons from trading on the credit of property which is in their possession but which does not really belong to them, and that for this purpose it may be desirable to legislate on the lines of the English Bills of Sale Acts, by requiring mortgages of moveable property to be registered, at all events, in certain classes of cases. My chief doubt is as to whether and how far transfers of

moveable property should be recognized at all unless accompanied by possession. But in any case such legislation as is required would be most conveniently embodied in an enactment separate from the Bankruptcy Bill, and we are now considering in the Legislative Department what form it should assume.

“ Part IV of the Indian Bill contains such of the provisions of Parts IV and V of the English Act as appear applicable to the official who will in almost every case discharge the functions both of the official receiver and of the trustee under that Act. I propose to retain for this official the title of official assignee which he now bears under the Indian Insolvency Act, and which apparently he wishes to continue to bear. I believe that the chief reason why the term ‘ official assignee ’ was not used in the last English Bankruptcy Act was that it was not desired to revive certain associations which have gathered round the official assignees appointed under earlier Acts, and it was thought that the official administrator might smell more sweet under another name. I am glad to think that the titles of the existing Indian assignees do not call up similar associations, and to hope that the actions of their predecessors smell sweet and blossom in their dusty surroundings. I have inserted a saving (section 58 (3) ) for the rights and interests of the gentlemen now acting as official assignees, and when the Bill is in Committee I dare say that they will help me to see that this saving does all that is required. With respect to the mode in which the official assignee is to keep his accounts and make his payments and investments, I am anxious to make no greater change than is necessary in so much of the existing rules and practice as may have worked well, but it seems to be desirable as a matter of principle that money received on account of bankruptcy estates should, like money received by ordinary Civil Courts, be paid into a Government treasury or into a bank conducting treasury business for the Government, in order that there may be the security of the Government for its safe custody, and that the safeguards against the occurrence of error provided by the rules of the Government with respect to payments from Government treasuries may be brought into operation. In framing the clauses on this subject which I have inserted in the Bill, I have had the assistance of Messrs. Barbour, Westland and Hardie, all of whom are, I believe, of opinion that they will not fetter the official assignee in any unnecessary shackles of red tape.

“ I need not dwell on Part V of the Bill, which relates to special assignees and the provisions of which are not likely to be much used.

“ Part VI of the Bill deals with the constitution, procedure and powers of the Courts which are to exercise jurisdiction under this measure. These



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Courts will be the High Courts of the Presidency-towns, the Recorder's Court at Rangoon, unless that Court is merged in a Chief Court before this Bill comes into operation, and any other Courts on which it may be found convenient to confer bankruptcy jurisdiction. It may possibly be desirable to confer such jurisdiction on the Courts at such places as Allahabad, Lahore or Karáchi, and the Bill has been so framed as to admit of the jurisdiction thus conferred being limited to particular classes of cases. Power is given to each of the High Courts at the Presidency-towns to delegate part of the bankruptcy jurisdiction either to a Small Cause Court Judge or to an officer of its own. I understand that the former arrangement is preferred at Madras, and the latter at Calcutta and Bombay.

“ Part VII of the Bill, like Part VII of the English Act, enables the provisions of the law to be modified and simplified in the case of small bankruptcies. I have nothing to say about this Part, except that I am inclined to think that the pecuniary limit fixed for small bankruptcies might be raised.

“ Part VIII of the Bill, following the English Act, contains stringent provisions for the punishment of fraudulent creditors and debtors. Suggestions have been made for adding to the list of offences dealt with by this Part of the Bill, but I think it will be found that provision has been made either by this Part of the Bill or by the Penal Code for all the offences which need be covered.

‘ Last of all comes a Part containing supplemental provisions, near the end of which will be found a clause for the distribution of certain unclaimed dividends for which creditors have not proved, and which appear from the note furnished to me by Mr. Turner, the Official Assignee of Bombay, to have been accumulating for some time in the Bombay Insolvency Court, and to amount there to some two lakhs or more. Mr. Turner has also referred in his note to a question which has been raised about the validity of certain rules under which the interest on unclaimed or undistributed assets has been applied towards defraying charges connected with the administration of insolvent estates. But if, and so far as, the validity of those rules is open to question, the doubt can only be set at rest by Parliamentary legislation, which would, I feel sure, be granted if necessary, and accordingly I have not dealt with the point in the present Bill.

“ With these explanations, which have necessarily been of a somewhat technical character, I commend the Bill to the favourable consideration of the Council.”

The Motion was put and agreed to.

[*Mr. Ilbert; Sir Stewart Bayley.*]

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The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published 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.

### INDIAN MUSEUM BILL.

The Hon'ble SIR S. BAYLEY moved for leave to introduce a Bill to alter the constitution of the body corporate known as the Trustees of the Indian Museum, and to confer certain additional powers on that body. He said:—

“ The matter with which this Bill has to deal is, practically, a small executive arrangement, which it becomes necessary to trouble the Council with; because the constitution of the Trustees of the Indian Museum was itself settled in a somewhat elaborate form by an Act of the legislature—XXII of 1876. The special object of this Bill is to give effect to an arrangement which had been come to by the Government of Bengal with the Trustees of the Museum and with the sanction of the Government of India. Apart from the collections in the Indian Museum, the Government of Bengal have for some years been gathering together a valuable economic Museum, which was considerably assisted by the Revenue and Agricultural Department with a view to the Calcutta Exhibition of two years ago. They have also got an ethnological collection, a collection of Indian Art-ware and a Fine Art collection. These have all been under separate management under the Government of Bengal. There has been a good deal of difficulty in finding for them a proper local habitation and in arranging for their proper maintenance and custody and for their being available to the public. An arrangement has now been come to by the Government of Bengal with the Trustees of the Museum that all these collections shall be brought under the maintenance, control and administration of the Trustees of the Museum. But in order that the wishes of the Government of Bengal with respect to these collections—of which the property remains with them although the administration will be in the hands of the Trustees—in order that the Government of Bengal may have a proper amount of influence in their management, it is necessary that they should be represented on the body of the Trustees. At present they are not so represented. For this purpose it becomes necessary to alter the number of Trustees at present regulated by the Act of 1876. The Trustees under that Act are sixteen in number; three of them are *ex officio*, namely, the Accountant-General, a Secretary to the Government of India, and the Superintendent of the Geological Survey. Five of the Trustees are appointed by the Government of India; five represent the Asiatic Society; and the other three are elected by the general body

of the Trustees. That is the present constitution. It will now be altered under the proposed Bill, and the number of Trustees will be twenty-one. Of the *ex officio* Trustees, only one, the Accountant General, will remain; the Government of India will still nominate five; the Asiatic Society will still be represented by five; and the new feature in the case is that the Government of Bengal will nominate five Trustees on its own account, and this united body will elect five additional Trustees to act with them.

“ These are the main alterations of the constitution of the Trusteeship.

The Bill will also enable the Trustees to deal with those collections which will be under their administration, although not their property; and the Bill will also provide for a subsidiary matter, which is that the Trustees shall have the power to make over to the Government of Bengal certain land attached to the Museum, in order that the Government of Bengal may thereon provide the accommodation which becomes necessary to meet the additional responsibilities which the Trustees of the Museum now take upon them.”

The Motion was put and agreed to,

#### NORTH-WESTERN PROVINCES RENT ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1881.

#### NORTH-WESTERN PROVINCES LAND-REVENUE ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the North-Western Provinces Land-revenue Act, 1873.

The Council adjourned to Wednesday, the 2nd June, 1886.

SIMLA; }  
The 21st May, 1886. }

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