

*Friday,*  
*28th September, 1906*

**ABSTRACT OF THE PROCEEDINGS**

**OF THE**

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

**LAWS AND REGULATIONS**

**Vol. XLV**

**April 1906 - March 1907**



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OF

# THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

# LAWS AND REGULATIONS,

April 1906 - March 1907

## VOLUME XLV



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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 the Viceregal Lodge, Simla, on Friday, the 28th September, 1906.

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*.

The Hon'ble Sir A. T. Arundel, K.C.S.I.

The Hon'ble Sir Denzil Ibbetson, K.C.S.I.

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 Mr. T. Gordon Walker, C.S.I.

INSOLVENCY (PROVINCIAL) BILL.

The Hon'ble MR. RICHARDS moved for leave to introduce a Bill to consolidate and amend the law relating to Insolvency in British India, as administered by Courts having jurisdiction outside the Presidency-towns and the Town of Rangoon. He said:—"My Lord, in making this motion I do not propose to explain the provisions of the Bill in any detail, because it is founded on, and is indeed for the most part, a mere reproduction of the Chapter on Insolvency in the Bill to amend the Code of Civil Procedure which has for some time past been before this Council. In the form of that Chapter the present Bill, or the greater part of it, has been passed by a Select Committee of this Council and has been generally accepted by Local Governments, High Courts and other authorities to whom it was circulated. The necessity for some amendment of the law is admitted and no objection has been taken to the general form of the amendment adopted in the Bill.

"The Law of Insolvency in the Presidency-towns and Rangoon differs from that in force in the rest of British India: in the former it is governed by the Imperial Statute, the Indian Insolvency Act of 1848; in the latter by the Code of Civil Procedure. The present Bill does not affect the Act of 1848, nor does it affect insolvency proceedings in the towns to which that Act applies.

[*Mr. Richards.*] [28TH SEPTEMBER, 1906.]

It takes the place of the Chapter on Insolvency in the Code and relates only to the parts of British India to which the Act does not apply.

“The provisions of the Insolvency Chapter of the present Code originated in the Code of 1859, and were somewhat extended in the Code of 1877 and by the amending Act of 1879: but since 1879 they have not been changed and the Chapter still remains, as it was described by the late Lord Hobhouse, ‘a germ and nothing more than a germ of an Insolvency Law.’ Since then conditions have progressed and there can be no doubt that the time has arrived when a more complete law is needed, both for the purpose of relieving honest, but unfortunate, debtors, and for the purpose of securing the rights of creditors. This is especially the case in the large centres of trade in the Mufassal, and it is to be remembered that there are more than a score of towns in the Mufassal, with a population of over a hundred thousand. In the more backward parts of the country there is perhaps little need of any law of Insolvency at all at the present time, but the Bill is drawn to apply only to areas within the jurisdiction of such Courts as the Local Governments may notify; it need not therefore be applied to these parts.

“Speaking generally, the main defects in the present law are that its application is too limited in scope; that it does not afford adequate relief to honest debtors; and, on the other hand, that it does not sufficiently secure the rights of creditors.

“As to the first of these matters—the Insolvency Chapter of the Code of Civil Procedure can be made use of only by debtors who have been arrested or imprisoned in the execution of a decree for money or against whose property an order of attachment has been passed in execution of such a decree; it can be put in force only by creditors who have obtained a decree for the payment of money. It is limited therefore to cases in which legal proceedings have been instituted and judgment obtained. The Bill removes this restriction by declaring that an insolvency petition may be presented by any creditor or by any debtor if the debtor has committed an ‘act of insolvency,’ and an ‘act of insolvency’ is defined in the Bill (following English legislation and, to some extent, the law of the Presidency-towns) to include acts which have the effect of defeating the rights of the creditors, such as fraudulent transfers of property or the absconding of the debtor; acts which are of themselves evidence of insolvency, such as the conveying of property to a trustee for the benefit of creditors generally, the giving notice to creditors that the debtor has suspended, or is about to suspend, payment of his debts, and the presentation of a petition

[28TH SEPTEMBER, 1906.] [Mr. Richards.]

to be adjudged an insolvent under the Bill; and also acts on which insolvency proceedings can be founded under the present Code. The scope of the Bill therefore is much more extensive than that of the present law.

“Next as regards the relief of debtors. Under the Code of Civil Procedure a debtor is released from custody only on the certificate of the receiver that the insolvent has placed him in possession of all his property, and when he is finally discharged under the insolvency proceedings the effect of the discharge is limited: it does not free the debtor himself from arrest or imprisonment, or his property from seizure and attachment, on account of any debt which has not been entered in the schedule: and even in respect of scheduled debts his property subsequently acquired may be taken in execution until those debts have been satisfied to the extent of one-third, or until the expiry of twelve years from the date of discharge. The debtor, therefore, although he may have acted perfectly honestly throughout, may remain under grave disability for a considerable period. Under the Bill, on the contrary, the debtor will be released from prison immediately on the making of an order adjudging him an insolvent, and after his discharge, speaking generally, no proceedings can be taken against him in respect of any debts provable in the insolvency.

“Then as regards creditors, it will be found that the rights of creditors are much better secured under the Bill than under the existing law. The order of adjudication is to relate back to the date of the presentation of the insolvency petition, and from that time the property of the debtor is to be available only for the payment of debts under the insolvency. Provisions have also been added, following the English law, for the avoidance of voluntary settlements and of transfers of property giving undue preference to particular creditors, and the provisions intended to prevent dishonesty on the part of debtors have been made more stringent.

“In addition to these principal matters clauses have been inserted, *inter alia*, to provide for compositions; to make special provisions in regard to immoveable property; and to give the Courts power to summarily administer small estates.

“The bill departs in one important respect from the proposals of the Select Committee. Under the scheme adopted by them insolvency proceedings were initiated by a ‘conditional order’ made *ex parte*, followed by a ‘declaration of insolvency’ made after hearing the parties concerned. It is thought that this procedure would be liable to abuse, and that conditional orders would be obtained

[*Mr. Richards; Mr. Baker.*] [28TH SEPTEMBER, 1906.]

merely to harass an alleged debtor. The Bill therefore provides for one order only, and that an adjudication order made after hearing the debtor; but in order to prevent the property of the debtor being made away with in the interval, the Court is given powers of control over that property between the date of the presentation of the petition and that of the adjudication order.

“The general result of the Bill, if passed, will be to provide an Insolvency Law based on the lines of the English Law of Bankruptcy, but in a greatly simplified form—a form which it is hoped will be suitable to the requirements of the Mufassal and to the capacities of the Courts which will have to administer it. It consists of 46 clauses in all, as against the 170 sections and 53 rules which constitute the English Act of 1883, and the 134 clauses and 55 rules of which the Bankruptcy Bill introduced in this Council in 1885 was composed.”

The motion was put and agreed to.

The Hon'ble MR. 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.

#### PRESIDENCY BANKS (AMENDMENT) BILL.

The Hon'ble MR. BAKER moved for leave to introduce a Bill further to amend the Presidency Banks Act, 1876. He said:—“My Lord, this Bill has been under consideration for some time, and it was originally in contemplation that it should be a somewhat important measure conferring power on the Banks, among other matters, to have recourse to the London money market under certain restrictions, a power which they do not at present possess. Serious objections have, however, been found to exist to this proposal, and eventually it was decided that, in the interests of the country as a whole, it is not expedient to give the Banks access to London. This proposal has therefore been abandoned, and, as a consequence, certain other proposals which were contingent thereon have also been dropped.

“These omissions have deprived the Bill of much of its importance. It is now a measure of relatively minor consequence, whose only object is to remove certain restrictions on the powers of the Banks which experience has shown to be unnecessary, and slightly to enlarge the permissible scope of their operations.

[28TH SEPTEMBER, 1906.] [Mr. Baker.]

The principal new powers which it is now proposed to confer on the Banks are the following, *viz.*:

- (1) to deal in securities issued by State-aided Railways or by District Boards ;
- (2) to make loans and advances on other than personal security for a period not exceeding six months, the existing limitation being three months ;
- (3) to grant overdrafts up to Rs. 10,000 instead of only up to Rs. 2,000 as at present ;
- (4) with the sanction of Government in each case to take over the capital, assets and business of any other bank in British India, and to carry on its business in accordance with the provisions of the Presidency Banks Act ;
- (5) to advance money on the joint and several promissory note of two or more persons unconnected in business ;
- (6) with the previous sanction of the Local Government, to lend money for a period not exceeding six months to the Court of Wards in respect of estates under management ; and,
- (7) in the case of the Bank of Madras, to lend, on Ceylon Government securities, resources raised by the Banks in Ceylon.

“It is also proposed to remove the existing statutory limitations on the capital of each bank.”

The motion was put and agreed to.

The Hon'ble MR. BAKER introduced the Bill.

The Hon'ble MR. BAKER moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published only in English in the Gazette of India, the Calcutta Gazette, the Fort Saint George Gazette and the Bombay Government Gazette.

The motion was put and agreed to.

The Council adjourned *sine die*.

SIMLA ;  
The 28th September, 1906. }

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