

- (1) பக்கங்களின் எண்ணிக்கை 22
 (2) புதுக்கித் திருப்பிய நாள் 5/1996
 (3) ஆதாரக் குறிப்பவர் சுருக்கப்படும்

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

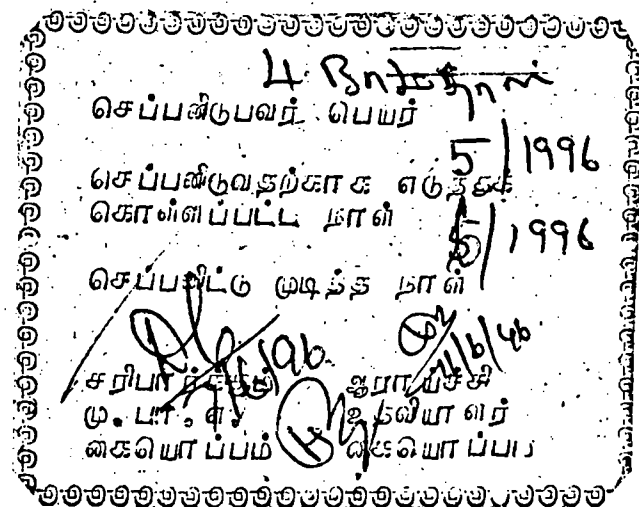
JUDICIAL துறை

அரசாணை எண்.	321	அச்சகம்
மு. கோப்புத் தாள் எண்.	(52-53)	பலவகை
நாள் :	10. 2. 1881	199.

மடிக்கலோ கண்டபடி கையாளலோ கூடாது.

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ஆவண. கா. 1-18,006-6-9-90.



GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

10th February 1881, No. 321.

Bills—Legislative.

Read the following paper:—

No. 52. From D. FITZPATRICK, Esq., Secretary to the Government of India, Legislative Department, to the Chief Secretary to Government, dated Fort William, 2nd February 1881, No. 114.

I am directed to forward, herewith, forty copies of the papers noted in the margin, and to request that His Excellency the Governor in Council will favor the Government of India in this Department with an expression of his opinion on the provisions of the Bill, and with the opinions of such selected officers as His Excellency in Council may think fit to consult on the subject.

2. I am also to request that the Bill and Statement may be published in the Fort St. George Gazette in English and in such other languages as His Excellency in Council may deem proper, and that the dates of such publication may be communicated in your reply.

3. The reply to this letter should be sent in, if possible, by the 1st March 1881.

No. 53. ORDER THEREON, 10th February 1881, No. 321.

Ordered that copies of the Bill "for the amendment of the law relating to Insolvent Debtors in India," and the Statement of Objects and Reasons, be forwarded to the Honorable the Judges of the High Court and to the officers specified in the margin, with the request that they will favor the Government with their views on the provisions of the Bill by the 26th instant.

2. Copy will also be furnished to the Chamber of Commerce for an expression of their opinion on the provisions of the Bill.

3. The Bill and the Statement of Objects and Reasons will be published in the Fort St. George Gazette.

(True Extract.)

R. DAVIDSON,
Chief Secretary.

To the Honorable the Judges of the High Court,
the Advocate-General,
T. M. Busteed, Esq.,
Srinivasa Rao, Esq.,
P. P. Hutchins, Esq.,
the Chamber of Commerce,
the Superintendent, Government Press.

with Bill, &c.

Exd. J. Wright.

Govt. of 1881 Madras.

JUDICIAL.

To
THE HONORABLE THE JUDGES
OF THE HIGH COURT.
&c. &c. &c.

Dated February, 10th.

Issued

Recd.

Encl.

G.O., 10th February 1881, No. 321.

FEBRUARY.
Nos. 52-53.

Bills—Legislative.—Copies of the Bill "for the amendment of the law relating to Insolvent Debtors in India," &c., forwarded to the Honorable the Judges of the High Court and to certain officers, with request that they will favor Government with their views on its provisions by the 26th February 1881.

STATEMENT OF OBJECTS AND REASONS.

THE Indian Insolvent Acts, following the analogy of the law of Bankruptcy in England at the time of the first of these Acts being passed, contained no provision for compelling the property of an insolvent, which had been attached in execution before his adjudication, to be distributed among the general body of his creditors. The later English Bankrupt Acts, however, provide for the distribution amongst the bankruptcy creditors of the proceeds of the execution if a petition be filed within fourteen days after the sale; thus securing, as far as possible, equality among creditors, a purpose which the Civil Procedure Code has generally in view; and one of the objects of this Bill is to give that equality of distribution, wherever the property attached has not actually been distributed among the attaching creditors.

The only power which the Insolvent Court now has to stay proceedings in execution does not arise till the Insolvent's schedule has been filed, and in the cases where the insolvent, is friendly to the execution creditor the filing of the schedule is invariably delayed for the purpose of giving him an advantage.

Further, the Code empowers Courts to attach the property of a defendant in cases where there is reason to believe that he is likely to make away with that property in fraud of the plaintiff. Under the language of the old Civil Procedure Code it was held that property so attached before judgment vested in the Official Assignee of the defendant, and was assets of his estate giving no preferential claim to the attaching creditor, but it has been successfully contended that the effect of the new Code, section 490, is to give to a creditor attaching before judgment priority over the assignee, even though the adjudication were before judgment obtained by the attaching creditor.

The third section of the Bill is intended to provide for the rateable distribution of the insolvent's property amongst his creditors in cases where the modern English law would so distribute it, instead of allowing one creditor to sweep away the whole or a large portion of the assets.

From a very early period the Bankruptcy law of England provided that persons who, by leaving goods in the hands of traders, enabled them to maintain a false appearance of wealth and thus obtain credit could not claim such goods from the assignee of the bankrupt, and this provision was introduced into this country by the Insolvent Act. There was nothing however to give similar rights to execution-creditors, and therefore this anomaly occurred that, where an attachment was laid on goods in the hands of a person who became insolvent, the custody of the law took the goods out of the order and disposition of the bankrupt so that a subsequent adjudication did not vest the goods in the assignee, but the attaching creditor was not able to treat the ostensible ownership of the judgment-debtor as giving him any claims. It is not easy to see any sound basis for this distinction, the injurious influence of which is, to some extent, obviated in England by the Bills of Sale Act. The fourth section is intended to avoid this anomaly.

Down to a very recent period it was generally supposed that where moveable property was in the possession and ostensible ownership of a partnership a member of which became bankrupt, the provisions of the Bankrupt Law vested such property in the assignee; it was however decided in *ex parte Dorman* L. R. 8 Ch. App. 41, that such was not the effect of the language of the Acts upon the ground that it could not be the intention of the Statute to give such rights where the other partners were solvent. The Appellate Court however was of opinion that where the firm is in fact insolvent the case comes within the mischief against which the order and disposition clause is intended to provide, and in this country it has been decided that the existence of an absent partner does not prevent the provisions of that clause attaching. The fifth section is intended to apply the order and disposition-clause to such cases as fall within the mischief which it is intended to prevent.

Much of the trade of the Presidency-towns is carried on by *Gumáshtas* on behalf of persons residing in remote parts of the *Mufassal*, and in many cases if such traders became insolvent they might be able, by taking advantage of the insolvency proceedings in the Procedure Code, to embarrass their general trade-creditors who would have much difficulty in supervising the proceedings in a *Mufassal* Court. The sixth section is intended to enable the creditors of such persons to have the liquidation of their affairs transferred to a Court with machinery better organised for the administration of bankrupt estates in cases where such a course is deemed by the Court to be expedient.

It was found some years ago in England that similar powers given to Scotch Courts were applied to the detriment of English creditors, and a modification of the Scotch Law was enacted to prevent its application to persons whose creditors were principally in another part of the United Kingdom, see 23 & 24 Vic., c. 33.

Sums in the aggregate considerable, though, in general, individually small, are from time to time left unclaimed in the hands of the official assignee, and so long ago as 1841 an Act was passed empowering the official assignee after the lapse of six years to distribute the amount of such unclaimed dividends rateably among the creditors who had proved the claims.

The language of this Act however was so singularly framed that it seems impossible that there ever could be a distribution made of such unclaimed dividends. The seventh section is intended to correct this.

J. PITT KENNEDY.

The 23rd January, 1891.

Exd. R. S. B.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

Bill for the amendment of the law relating
to Insolvent Debtors in India.

(Statement of Objects and Reasons.)

A
BILL

FOR

The amendment of the law relating to Insolvent Debtors in India.

WHEREAS it is expedient to amend the law relating to Insolvent Debtors in India; It is enacted as follows:—

1. This Act may be called "The Insolvent Law Amendment Act, 1881."

it extends to the whole of British India; and

it shall come into force on the first day of April 1881.

2. In this Act, unless there be something repugnant in the subject or context,—

the word "Insolvent" means a person of whose property a receiver has been appointed under the Code of Civil Procedure, section 351, a person upon whose petition a vesting order has been made under the seventh section of the eleventh and twelfth of Victoria, Chapter XXI, entitled an Act to consolidate and amend the laws relating to Insolvent Debtors in India, and a person who has been adjudged to have committed an act of insolvency under the provisions of section eight or under the provisions of the ninth section of the same Act:

the word "adjudication" means the order under the said section 351 of the said Code appointing a receiver, a vesting order under the said seventh section of the said Act, and an order under the said eighth section or under the said ninth section of the said Act adjudging any person to have committed an act of insolvency; and

the word "assignee" means the person in whom the property of any Insolvent has been vested by the adjudication of such Insolvent.

3. If, at the time of the adjudication of any insolvent, any of his property has been attached in execution of any decree or under any order for attachment before judgment, the Court, under whose order such property has been attached, shall withdraw the attachment and permit his assignee to take possession of the same.

If, before the Court has had notice of such insolvency, the attached property has been sold, the proceeds of the sale, after deducting the costs of the attachment and sale and all other necessary costs incurred in and about the realization of such proceeds, shall be paid to the assignee of such insolvent:

Provided, that in case the Court has not had notice of the adjudication of such insolvent, before such proceeds are distributed, the same shall not, merely on account of such adjudication be recalled from the persons to whom they have been paid.

When the Court withdraws the attachment, it may, if it think fit, direct that the proper and necessary costs of the attachment and of the preservation of the property attached shall be charged upon the proceeds of such property; and if such order be made, the assignee shall apply the proceeds of such sale in payment of such costs after payment of the costs of such sale, but in priority to payment of all debts of the insolvent payable out of such proceeds.

4. No property which, under the provisions of the twenty-third section of the said Act would be deemed to be the property of such insolvent, shall be held to have been taken out of his order and disposition by reason only that such property has, before the adjudication of such insolvent, been attached in execution of a decree or under any order for an attachment before judgment.

5. Whenever any persons trading in partnership together have, by the consent and permission of the true owner thereof, in their possession, order or disposition, goods or chattels whereof such persons are reputed owners, or whereof they have taken upon them the sale, alteration or disposition as owner, and while they have such possession, order or disposition, any of such persons is, under the provisions of the said Act, adjudicated an insolvent, or obtains a vesting order on his petition, such goods and chattels shall be deemed to be the property of such partnership so as to become vested in the Official Assignee of the Insolvent Court by the order made in pursuance of the said Act for the purpose only, and so far as may be required, for the purpose of paying the joint creditors of the said partnership.

6. Whenever any person who carries on trade within the local limits of the Ordinary Original Civil Courts, is, under the provisions of section 351 of the Code of Civil Procedure, declared to be an insolvent, the Insolvent Court in any of the said towns in which he may carry on business at the time he is so declared to be an insolvent, may, if it think fit, on the application of any creditor of such trader, adjudge him to have committed an act of insolvency:

such adjudication shall have the same force and effect as if he had, under the provisions of the eighth section of the said Act, been adjudicated an insolvent by such Court, at the time when he was declared to be an insolvent under the provisions of the said Code;

and all the estate and effects of such insolvent shall, unless the said Court otherwise directs, vest in the Official Assignee of such Court,

and any person appointed receiver under the provisions of the said Code shall, unless such Court otherwise directs, thereupon make over to the Official Assignee all the property of the insolvent which may have come to his hands as such receiver:

Provided that no such adjudication shall avoid, or in any way affect, any dealing of such Receiver with any of such property before he has notice of such adjudication.

7. The assignee of each insolvent estate shall, on the expiration of six months from the declaration of any dividend, file in Court an account upon oath of every dividend remaining in his hands unclaimed, specifying the name of each creditor to whom each such dividend is due, as well as the amount of the debt due to each such creditor, and shall publish the same in the numbers of the local Gazette as are first and second successively printed next after such six months, and all dividends remaining unclaimed for a period of six years shall, after the second of such advertisements, revert to the general fund of each respective estate for re-distribution by the Official Assignee among the remaining creditors of such estate.

All such unclaimed dividends shall remain under the control and management of the Official Assignee pending payment and distribution in such manner as shall be prescribed and furnished by any rules to be made under the powers conferred by section seventy-six of the said Act.

Exd. R. S. B.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

BILL

FOR

The amendment of the law relating to
Insolvent Debtors in India.

(Mr. Kennedy.)

Govt. Central Press.—No. 837 L. D.—24-1-81.—130.

80/100 321/81

No. 114

FROM

D. FITZPATRICK, Esq.,

Secretary to the Government of India,

Legislative Department.

TO

The Chief Secretary to Government
Madras.

Dated, Fort William, the 2nd February 1881.

SIR,

I am directed to forward herewith ⁴⁰forty copies of the papers ^{one being} noted in the margin, and to request ³⁷that His Excellency the Governor in Council will favour the Government of India in this Department with an expression of ^{his} opinion on the provisions of the Bill, and with the opinions of such selected officers (~~not exceeding~~ ^{in number}) as His Excellency in Council may think fit to consult on the subject.

2 I am also to request that the Bill and ^{Statement} may be published in the ^{Fort St George}Gazette in English and in such other languages as His Excellency in Council may deem proper, and that the dates of such publication may be communicated in your reply.

3. The reply to this letter should be sent in, if possible, by the ^{1st March} 1881.

I have the honour to be,

SIR,

Your obedient Servant,

[Signature]
Secretary to the Government of India.

Govt. C. B. Press, Simla.—No. 111 L. D.—24-6-78.—100.

Judicial 1881 Dep't
[Bills - Legislative]

From
80 321/81
The Govt. of India
Legislative Deptt.

No: 114. / Encls: 2/

139 copies of Encl. sent / follow /

Dated 2nd } February '81
Recd: 7th }

No: 398

Forwarding 40 copies
of Bill [with its Statement of
objects & reasons] to amend
the law relating to Insolvent
Debtors in India, and re-
questing opinion of Madras
Govt: by 1st March '81 if
possible —

Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following

Letter from the Government of India, Legis-
lative Deptt., dated 22 February 1881, No: 114.

Order thereon, 10th Aug 1881, No: 321

Ordered that
copies of the Bill for the
amendment of the law
relating to Insolvent
Debtors in India, and
the Statement of Objects
and Reasons, be for-
warded to the Honble
the Judge of the High
Court.

8
Court and to the Officers
specified in the
margin with the
request that they
will favor the Govt
with their views on the
provisions of the Bill
by the 26th instant.

3. The Bill and
the Statement of Objects
& Reasons will be
published in the St. George's Gazette.

W. J. J.
1858

The Advocate General
J. M. Busteed Esq. Ind. Secy
Srinivasa Rao Esq.
P. P. Hutchins Esq.
~~J. H. Nelson Esq.~~
The Chamber of Commerce

2. Copy will also be
furnished to the Chamber
of Commerce for an
expression of their opinion
on the provisions of the
Bill

To The Hon. the Judges of the H. J. Court }
Advocate General 3
J. M. Busteed Esq. 3
Srinivasa Rao Esq. 3
P. P. Hutchins Esq. 3
Chamber of Commerce 3
Supt. Govt. Press 3

with Bill, &c

Dec 12/2

740.35-

Gobt. of {1887} Madras.

Just.

To

Dated 10th Feb 1891, No. 321
Recd.

Nos. 52-53

Bills. - Leg. Copies of the
Bill "for the amendment of the
law relating to Insolvent
Debtors in India", was, for
to the Hon. the Judges of the
High Ct. and to certain offrs,
with request that they will
favor post. with their views
on its provisions by the 26th
Feb'y 1881.

ср
21/2

Very Respect 9

Govt. of (1881) Madras.

Jacob
Jr.
Jr.

to
G.O., 10th Feb 1881, No. 321

Nos. 52-53

Bills - Legal Copies of the
Bill "for the amendment of
the law relating to Insolvent
Debtors in India", &c, for
to the Hon. the Judges of the
High Ct. and to certain offrs
with request that they will
favor for with their views
on its merits by the 26th
Feb 1881..