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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th June, 1886:—

Bill No. 9 of 1886.

THE DEBTORS BILL, 1886.

CONTENTS.

A Bill to amend the law relating to Imprisonment for Debt.

WHEREAS it is expedient to amend the law relating to imprisonment for debt; It is hereby enacted as follows:—

Short title and commencement.

1. This Act may be called the Debtors Act, 1886; and it shall come into force on the first day of January 1888.

Extent.

2. (*1*) This Act shall extend, in the first instance, only to the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh.

(*2*) But any other Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, extend this Act, with effect on and from a day not less remote than one year from the date of the notification, to the whole or any specified part of the territories under its administration or to any class of debtors within the whole or any specified part of those territories.

Definition.

3. In this Act the expression "Revenue Court" means a Court having jurisdiction in suits for the rent, revenue or profits of land.

[Act XIV, 1882, s. 254: Act XII, 1881, s. 156: Act XIX, 1868, s. 109.] XIV of 1882.

4. Notwithstanding anything in the Code of Civil Procedure or any other enactment, a person shall not be liable to arrest or imprisonment for default in compliance with a decree or order of a Civil or Revenue Court for payment of money except in the following cases:—

Enforcement of decree or order for money by imprisonment permissbile in excepted cases only.

[Act X, 1882, s. 480: Act XIV, 1882, ss. 170, 174 & 412.]

(a) where the order is for payment of a fine;

[32 & 33 Vic., c. 62, s. 4: Guardians and Wards Bill, 1886, s. 38:]

[L. R. 6 Ch. 156—158.]

(b) where the defaulter is a trustee or person acting in a fiduciary capacity, and the decree or order requires him, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself;

[Act XIV, 1882, s. 359.]

(c) where the Court is satisfied that, since incurring the liability in respect of which the decree or order was made, the defaulter has fraudulently transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation thereto, with the object or effect of impeding the enforcement of the decree or order by the attachment and sale of his property;

[32 & 33 Vic., c. 62, s. 5.]

(d) where the Court is satisfied that the defaulter either has, or has had since the date of the decree or order, the means to pay the money, and has refused or without reasonable cause neglected, or refuses or neglects, to pay the same.

[41 & 42 Vic., c. 54.]

5. In any case coming within the exception specified in clause *(b)* of section 4 the Court may, after inquiry into the case, grant or refuse, either absolutely or on terms, any application for the arrest or imprisonment of the defaulter, or for his release from arrest or discharge from imprisonment.

Discretionary powers of Courts in some excepted cases.

[Act XIV, 1882, s. 287: 32 & 33 Vic., c. 62, s. 5.]

6. *(1)* The High Court, with respect to Courts subordinate to it, and the Chief Controlling Revenue-authority, with respect to Courts subordinate to it, may, with the approval of the Local Government and the sanction of the Governor General in Council, make rules for regulating the procedure to be observed in inquiries for determining whether the case of a defaulter for whose arrest or imprisonment application has been made is a case coming within the exceptions specified in clauses *(c)* and *(d)* of section 4, or within either of those exceptions.

Power to make rules for guidance of Courts in other excepted cases.

(2) Rules may be made under this section—

(a) for the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, at any time after the passing of this Act, and

(b) for territories under the administration of any other Local Government, at any time after the publication of the notification extending this Act to those territories or to any class of debtors therein;

but rules so made shall not take effect until the Act comes into force in the territories for which they have been made.

(3) An authority making rules under this section shall, before making the rules, publish a draft of the proposed rules in such manner as the Governor General in Council, by notification in the *Gazette of India*, prescribes.

(4) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(5) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(6) A rule made under this section shall not take effect until it has been published in the local official Gazette.

(7) The publication in that Gazette of a rule purporting to be made under this section shall be conclusive proof that it has been duly made.

7. The operation of the enactment under which the defaulter is liable to arrest or imprisonment in any case coming within the exceptions specified in clauses *(b)*, *(c)* and *(d)* of section 4, or within any of those exceptions, or is entitled to release from the arrest or discharge from the imprisonment, shall be subject to the following provisions, namely:—

Provisions as to imprisonment under Act.

(a) the defaulter may be imprisoned for such term, not exceeding six months, as the Court directs; [Act XIV, 1882, s. 342. Act XII, 1881, s. 163.]

(b) no allowance for the subsistence of the defaulter, or for supplying him with cloth-ing or bedding, shall be payable by the person on whose application the order for the imprisonment of the defaulter is made; [Act XIV, 1882, s. 339: Act XII, 1881, ss. 165 and 166: & Act XXVI, 1870, s. 36.]

(c) during the term of his imprisonment the defaulter shall be maintained at the expense of the Government, and be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment; [L. R. 13 Ch. D. 343.]

(d) notwithstanding the payment of the money in respect of which the decree or order was made, or any arrangement for the payment thereof or proof of present inability to pay it, or any expression of intention to apply for a declaration of insolvency, or any declaration of insolvency, or any request by the person on whose application the order for the arrest or imprisonment was made, the defaulter shall not be released from arrest, or, if he is in prison and the term of his imprisonment is not fulfilled, be discharged from prison, without the order of the Court; [Act XIV, 1882, ss. 336 & 341; & Act XII, 1881, s. 163.]

(e) an appeal from the order for the imprisonment of the defaulter, and from an order refusing his release or discharge under clause *(d)* of this section, shall lie— [Act XIV, 1882, s. 588 (29).]

(i) if the Court making the order is a Civil Court subordinate for the purposes of the Code of Civil Procedure to the District Court, then to the District Court, XIV of 1882.

(ii) if the Court making the order is any other Civil Court, then to the High Court, and

(iii) if the Court making the order is a Revenue Court, then to the authority to which appeals lie from orders of the Court relating to the execution of decrees, or, where those orders of the Court are final, to such authority as the Local Government may, by notification in the official Gazette, appoint in this behalf; [Act XII, 1881, s. 196.]

and the order passed on the appeal shall be final. [Act XIV, 1882, s 622 : Act XII, 1881, s. 199.]

8. Where the Court is of opinion that the defaulter has been guilty of any offence under the Indian Penal Code or under any enactment for the time being in force for the punishment of fraudulent debtors, it may, if it thinks fit, instead of ordering his imprisonment under this Act, send him to a Magistrate to be dealt with according to law. [Act XIV, 1882, s. 359.]

Commitment of fraudulent debtors to Magistrate.

XLV of 1860. [Indian Bankruptcy Bill, 1886, s. 105.]

9. Notwithstanding anything in Chapter XXXIV of the Code of Civil Procedure, or any other enactment, a defendant in a suit for money only who has been arrested before judgment shall not, as such, either be required to give security for his appearance at any time after the day on which judgment is given, or, if he has been committed to prison, be detained in prison after that day: [32 & 33 Vic., c. 62, s. 6.] XIV of 1882.

Special provisions with respect to arrest before judgment.

Provided that, if judgment is given against the defendant, and the decree-holder applies, on the day on which judgment is given, for the enforcement of the decree by the imprisonment of the judgment-debtor, the Court may require the judgment-debtor to give such security as it thinks sufficient for his appearance at any time when called upon while the application is pending, and, if he fails to give the security, may commit him to prison, or place him in the custody of an officer of the Court, until the disposal of the application. [Act XIV, 1882, s. 349.]

10. Nothing in this Act shall affect the liability to arrest and imprisonment of any person for whose arrest in execution of a decree or order a warrant has been issued by a Civil or Revenue Court before this Act comes into force in the territory in which the Court is established.

Saving of proceedings antecedent to commencement of Act.

11. The provisions of this Act shall bind the Crown. [L. R. 2 Ex. D. 47.]

Act to bind the Crown.

12. All powers conferred by this Act may be exercised from time to time as occasion requires.

Powers exercisable from time to time.

STATEMENT OF OBJECTS AND REASONS.

Imprisonment for Debt in India.

A decree or order for the payment of money may be enforced in India by the imprisonment of the judgment-debtor (Act XIV of 1882, s. 254). The Court has a discretionary power to refuse execution at the same time against the person and property of the judgment-debtor (s. 230), but has no discretionary power to refuse execution either against person or against property at the option of the creditor. When an application for execution of a decree is presented, it must, if it is not barred by efflux of time, and is otherwise in order, be admitted, and then the Court must order execution of the decree *according to the nature of the application* (s. 245). The Court cannot refuse to issue its warrant for the execution of the decree unless it sees cause to the contrary (s. 250), and "cause to the contrary," as interpreted by the Courts, means some cause which deprives the decree-holder of the right to execute, or to execute against the party against whom execution is sought, or to execute in the mode prayed for.

2. A judgment-debtor may, when arrested, obtain immediate release by payment of the debt; but if he does not, he must be brought at once before the Court (ss. 336-337).

3. The Local Government may by notification* direct that whenever a judgment-debtor is arrested in execution of a decree for money, and brought before the Court, the Court shall inform him that he may apply, under Chapter XX of the Code, to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court (s. 336).

* Notifications have been issued under this section by all Local Governments except Hyderabad and Coorg.

4. If the judgment-debtor expresses his intention so to apply, and furnishes sufficient security that he will appear when called on, and that he will, within one month, apply to be declared an insolvent, the Court is to release him from arrest. But if he fails so to apply, the Court may either direct the security to be realised, or commit him to prison in execution of the decree (s. 336).

5. A person is not to be imprisoned in execution of a decree for more than six months, or, if the debt does not exceed fifty rupees, for more than six weeks (s. 342).

6. Whilst he is in prison, a monthly allowance must be paid for his subsistence according to scales fixed by the Local Government. The allowance is to be supplied by the decree-holder, and is to be deemed costs in the suit (ss. 338 to 340).

7. He is to be discharged from prison—

(*a*) on the amount mentioned in the warrant of committal being paid to the officer in charge of the prison, or

(*b*) on the decree being otherwise fully satisfied, or

(*c*) at the request of the person on whose application he has been imprisoned, or

(*d*) on default in the payment of the allowance for his subsistence, or

(*e*) on his being declared an insolvent, or

(*f*) on the expiration of the term of his imprisonment (s. 341).

His discharge from prison does not discharge him from his debt, but he cannot be re-arrested under the same decree (s. 341).

8. By the Presidency Small Cause Courts Act, XV of 1882, the provisions of the Code of Civil Procedure are applied, with modifications and exceptions, to the procedure in the Small Cause Courts at Calcutta, Madras and Bombay. Among the provisions not so applied are those which relate to the release of an arrested judgment-debtor on his expressing an intention to apply for a declaration of insolvency. Chapter XX of the Code, relating to insolvent judgment-debtors, is also not applied to these Courts. (See s. 23 and sched. II.)

9. The Act, however, contains certain special provisions with respect to an arrested judgment-debtor. Under section 29 the Court may release him from arrest on his giving security for payment. And under section 30, if it appears to the Court that a judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or of any instalment under the decree, the Court may, from time to time, for such time and on such terms as it thinks fit, suspend the execution of the decree, and release the debtor, or make such order as it thinks fit.

10. In the four districts of the Dekkhan to which the Dekkhan Agriculturists' Relief Acts apply arrest and imprisonment for debt have been abolished in the case of agriculturists.* And certain special Acts for the relief of embarrassed landholders contain provisions protecting the debtor from arrest or imprisonment in respect of the debts to which the Acts apply.

* "No agriculturist shall be arrested or imprisoned in execution of a decree for money passed whether before or after this Act comes into force."—(Act XVII of 1879, s. 21, as amended by Act XXII of 1882, s. 8.)

Imprisonment for Debt in England.

11. Imprisonment for debt was abolished in England by the Debtors Act of 1869 (32 & 33 Vic., c. 62), except in the following cases:—

(1) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of a contract;

(2) default in payment of a sum recoverable summarily before a Justice or Justices of the Peace;

(3) default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of Equity any sum in his possession or under his control;

(4) default by a solicitor in payment of costs, when ordered to pay costs for misconduct as such, or in payment of a sum of money, when ordered to pay the same in his character of an officer of the Court;

(5) default in payment for the benefit of creditors of any portion of a salary or other income, in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order;

(6) default in payment of sums in respect of the payment of which orders may be made under the Act (that is, cases of contumacious refusal under section 5 of the Act, see para. 14).

12. The term of imprisonment in these excepted cases must not exceed one year (s. 4).

13. In cases (3) and (4) the Court has power to enquire into the case, and at discretion to grant or refuse an order for arrest or imprisonment (41 & 42 Vic., c. 54, s. 1).

14. Under section 5 of the Act of 1869, a Court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt, or instalment of any debt, due from him in pursuance of any order or judgment of that or any other competent Court. But the power is not to be exercised unless it is proved to the satisfaction of the Court that the person making default has, or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected to pay it. "Proof of the means of the person making default may be given in such manner as the Court thinks just, and for the purposes of such proof the debtor and witnesses may be summoned and examined on oath, according to the prescribed rules." A summons under this section is usually called a judgment summons.

15. It will be observed that all the cases in which a debtor is liable to imprisonment under the Act of 1869 involve some degree of delinquency.† And it has been held by high authority‡ that the Act was distinctly intended for the purpose of punishing fraudulent or dishonest debtors.

† Lord Hatherley, L. C., in *Middleton v. Chichester*, L. R. 6 Ch. 152.

‡ Jessel, M. R., in *Marris v. Ingram*, L. R. 13 Ch. Div. 338.

16. Sums recoverable summarily before Justices, or, as they are called in modern statutory language, Courts of summary jurisdiction, are usually fines. But as ordinary civil debts are in some cases so recoverable, it has been provided by the Summary Jurisdiction Act, 1879 (42 & 43 Vic., c. 49, section 35) that an order of a Court of summary jurisdiction for the payment of a civil debt is not to be enforced by imprisonment, unless the case is such as would make the debtor liable to imprisonment under section 5 of the Debtors Act, 1869.

Imprisonment for Debt in Scotland.

17. In Scotland imprisonment for debt for sums under £8-6-8 was abolished in 1835 by 5 & 6 Wm. IV, c. 70, but alimentary debts (that is, debts for the support of the debtor's wife or children) were excepted from the operation of that Statute. In 1880 was passed the Debtors (Scotland) Act, 1880 (43 & 44 Vic., c. 34), which enacts, by section 4, that,

"with the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be apprehended or imprisoned on account of any civil debt.

"There shall be excepted from the operation of the above enactment—

(1) taxes, fines or penalties due to Her Majesty, and rates and assessments lawfully imposed or to be imposed;

(2) sums decreed for aliment:

"Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than twelve months."

The same Act contains provisions for the relief of insolvent debtors and for the punishment of fraudulent debtors.

18. By the Civil Imprisonment (Scotland) Act, 1882 (45 & 46 Vic., c. 42), imprisonment for alimentary debts was abolished, except in cases where there is a wilful failure to obey the decree for the debt (ss. 3 and 4), and the maximum term of imprisonment for failure to pay rates or assessments was reduced to six weeks (s. 5).

Imprisonment for Debt in Ireland.

19. In Ireland the law as to imprisonment for debt is regulated by the Debtors Act (Ireland), 1872 (35 & 36 Vic., c. 57), as amended by 41 & 42 Vic., c. 54, and is practically identical with the English law.

Proposals for amendment of Indian Law.

20. On the 17th November, 1881, a circular was addressed by the Government of India to all Local Governments and Administrations, stating that the Government of India had under consideration the question of amending the provisions of the Code of Civil Procedure bearing upon the question of the arrest of *pardánashin* women in execution of the decrees of Civil Courts, but that before coming to any final conclusion on the subject the Governor General in Council thought it desirable to deal with the larger question of abolishing imprisonment for debt, and for this purpose to enquire whether sufficient reasons exist for the continued maintenance in India of the present system. Local Governments and Administrations were accordingly requested to favour the Government of India with a full expression of their opinion on the matter.

21. The replies to the circular disclosed much difference of opinion as regards the advisability of maintaining in India the present system of imprisonment for debt.

22. In favour of the maintenance under existing circumstances of the present system of imprisonment for debt were the Madras Government, the Madras High Court, the Bombay Government, the Bombay High Court, the Calcutta High Court, the Calcutta Chamber of Commerce and the Trades Association, Calcutta (unless a change were accompanied by the enactment of a stringent bankruptcy law), the British Indian Association, Calcutta, the Board of Revenue, North-Western Provinces, the Punjab Chief Court, the Chief Commissioner of the Central Provinces, the Chief Commissioner of Assam (provided the law were so altered as to permit the issue of process against the person only after all means of realising the decree by process against property have been exhausted), and the Chief Commissioner and the Judicial Commissioner of Coorg. The arguments which they advanced appear to be in the main the following:—

(*a*) that the total abolition of imprisonment for debt in India would be premature, and would remove from the Statute Book the only check upon the fraudulent alienation of property by solvent but dishonest debtors;

(*b*) that legislation has proceeded quite far enough in relief of the judgment-debtor, while there are in India special difficulties in executing a decree by attachment of property when the judgment-creditor is a member of an undivided* family. Creditors are not, it is said, in the habit of proceeding to extremities unless the debtor has the means of liquidating a portion at least of the debt. The men who go to prison are for the most part those who obstinately refuse to pay their debts, and cases of imprisonment for debt are not numerous;

* Sir C. Sargent, of the Bombay High Court, wrote:—
"The legal incidents of the undivided Hindu family, the minute distribution of property caused by the Muhammadan law of descent, and, though last not least, the practice of creating benami titles so common in this country, afford the dishonest debtor endless opportunities of baffling the efforts of the judgment-creditor to attach his property."

(c) that the abolition of imprisonment for debt would deprive lenders of personal security, would thereby depreciate credit, and would involve an increase in the rate of interest, already very high. In the case of agriculturists this might seriously impair their ability to pay the land-revenue;

(d) that abolition of imprisonment for debt should only be attempted when the habits of secrecy, engendered by centuries of oppression, have partly worn away, and when transactions are open and the registration of deeds and bonds has become habitual. When the debtor's property can be easily traced and seized in execution of a decree, then it will be reasonable and right to withhold execution on the body of a pauper debtor except as a distinctly exceptional and penal measure in the case of fraud.

23. In support of the abolition of imprisonment for debt were the following authorities :—

(a) the Advocate General of Bengal, who advocated the introduction of the English system, because there is no reason why the matter should not be regulated in India as in England, if proper exceptions and limitations, as contained in the English Debtors Act of 1869, are prescribed, and because the abolition of imprisonment for debt would not cause any public injury, while, on the other hand, the present system in most instances operates only as a means of oppression, to the total ruin of the party imprisoned and of his family;

(b) the Bengal Government, which, while not prepared to resist the opinions of the local officers that abolition would at present be premature, thought that, if an alteration of the bankruptcy law were at any time undertaken, measures might then be adopted for the abolition of imprisonment for debt in cases where fraud is not established against the judgment-debtor;

(c) the North-Western Provinces and Oudh Government, which regarded the existing practice of placing in the creditor's hands the power of selecting his own method of coercion as a relic of the old semi-barbarous debt laws which has now been eliminated from almost every civilized code of judicial procedure. The present system operates with severity against all debtors, honest and dishonest, indiscriminately. The power of subjecting a debtor to arrest and imprisonment should be entrusted *not* to the decree-holder, but to the Courts, and its exercise should be limited to cases where clear proof exists of fraudulent and contumacious attempts on the part of the judgment-debtor to defeat the operation of a decree. Imprisonment is especially hard on the cultivator and working-man, whom it deprives of their means of subsistence and of providing for their families;

(d) the North-Western Provinces High Court, which advocated the abolition of imprisonment for debt, as it is doubtful whether "any useful purpose is served by the perpetuation in this country of that remnant of barbarism";

(e) the Punjab Government, which believed that there is some reason to fear that, under the present system, creditors occasionally make use of the law to gratify vindictive feelings or personal spite, and to coerce debtors to sell their land and property at a price below its proper value or to relinquish their just rights. Discretionary power ought to be expressly allowed to the Civil Courts, imprisonment not being resorted to as an ordinary process of execution of a decree, unless the Court is satisfied that there has been fraud or wilful concealment of property;

(f) the Chief Commissioner of British Burma, who pointed out that the imprisonment of debtors who are paupers, but who are not fraudulent, does no real good to any class, works directly and indirectly great harm to the poorer classes, and causes a distinct loss to the community at large. The practice of permitting such imprisonment has been gradually circumscribed among other civilized nations: among some nations it has absolutely ceased; and there is no reason why the way should not be paved for the disappearance of the system in India. Civil Courts should be allowed to grant execution against the body of judgment-debtors against whom there might be *primâ facie* ground for presuming fraud or bad conduct, unless the presumption were rebutted by the judgment-debtor;

(g) the Judicial Commissioner of British Burma and the Recorder of Rangoon, who were of opinion that imprisonment for debt should be abolished, except in case of fraud, which should be punished criminally. The Recorder recommended that the law as it now obtains in England should be applied to India;

(h) the Resident at Hyderabad, who considered that the present system of imprisonment for debt is not wanted to compel payment, while it may be used to bring undue pressure to bear upon a debtor, especially in an agricultural country where interest in land is generally given as security for debts. He recommended that imprisonment for debt should be retained only to meet cases in which debtors abscond or endeavour to fraudulently evade meeting their obligations.

24. Thus, the preponderance of opinion was on the whole in favour of the maintenance of imprisonment for debt under the present condition of India, but a considerable and influential minority were in favour of its abolition.

25. The arguments on which the upholders of the present system rely fall into two classes: first, arguments which, if valid at all, are valid for England as well as for India; and secondly, arguments based on the special circumstances and conditions of India.

26. To arguments of the first class belongs the assertion that "to remove from the Statute Book the penalty of arrest and imprisonment in execution of a decree for money would be to paralyze the commerce and trade of the country." The same objection was made in England, first to the abolition of arrest on mesne process, * and afterwards to the abolition of arrest on final process. The power of arrest was removed, and neither commerce nor trade showed any symptoms of paralysis.

* See Lord Cottenham's speech in 1844 on the Creditors and Debtors Bill; Hansard, 74, page 453.

27. Those who uphold imprisonment for debt, not as being generally expedient, but as being specially required for India, do so mainly on two grounds: first, the complexity and obscurity of Indian titles to property; and, secondly, the exceptional prevalence of fraud in India, and the exceptional difficulties of detecting it.

As to the first ground, it has been remarked that if it is wrong to allow a debtor to pledge his person as security for his debts, it is not the less wrong because, owing to the defect of Indian property law, he finds difficulty in giving a satisfactory security over his property.

In the arguments based on the prevalence of, and difficulty of detecting fraud, there is undoubtedly much force, though it may be doubted whether the obstacles which can be placed in the way of a creditor realizing his debts are not as great in England as in India. But, however this may be, to make an honest, though needy, debtor liable to imprisonment, simply because fraudulent debtors are numerous and difficult to detect, appears to be as unjust as it would be to make homicide by misadventure punishable by death, simply because the crime of murder was rife and hard to prove.

28. There are in the opinion of the Government of India two principles which ought to be observed in every law of debtor and creditor. The Courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessaries of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the Courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all. Experience acquired in the Dekkhan goes to show that these principles are as applicable to India as to England. The Code of Civil Procedure recognises one of these principles by exempting from seizure for debt the debtor's bare means of subsistence. But this recognition is nullified by the refusal to adopt the principle of exempting the debtor's person from seizure. Of what use is it to reserve by law to the debtor the bare necessaries of life, when he can be compelled to give them up by the threat of imprisonment? By those who advocate the retention of the present system, much reliance is placed on the very small proportion of actual imprisonments to warrants of arrest; and the inference drawn from this proportion is that the law, though harsh in theory, produces no hardships in practice. But there is reason to believe that, in the great majority of cases, exemption from arrest is purchased either by renewal of bonds on extortionate terms, or by surrender of property which the law has exempted from seizure, or by surrender of property which does not belong to the debtor at all, but to his relations or friends. In other words, the law enables a creditor to do indirectly what it forbids him to do directly.

29. It is said that the honest debtor has an easy way out of prison through the door of insolvency. But in the first place, the honest debtor ought not to be sent to prison at all; and in the next place, the door which is provided for his release is, for some reason or other, very rarely used. There is, or was until recently, a strong concurrence of opinion to the effect that the Insolvency Chapter of the Code of Civil Procedure is practically a dead letter. As to the causes of its failure,—whether it is to be accounted for by the preliminary proceedings being unnecessarily cumbrous or expensive, or by the difficulty of satisfying the Court under section 351 that the debtor has not been guilty of any kind of misconduct, or by ignorance of the law and of the modes of relief available to debtors,—opinions differ; but about the fact of failure there appears to be no difference.

30. Since 1883 the Government of India has received and published reports obtained from Her Majesty's representatives abroad on the systems of imprisonment for debt in force in the various countries to which they are accredited. Those reports showed that imprisonment for debt has been abolished in nearly all civilized countries.

31. Having regarded to the state of the law in the United Kingdom, to those reports, to the success which has attended the abolition of imprisonment for debt in the case of agriculturists to whom the Dekkhan Agriculturists' Relief Acts apply, to some expressions to be found in the opinions of the authorities who considered the draft Bankruptcy Bill of 1885, and to the advocacy by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, and by the Chief Justice and Judges of the High Court of Judicature for the North-Western Provinces, of the entire abolition of the process of arrest for debt, so far as it is a process that can be set in motion at the discretion of the creditor, and of the enforcement of the process being restricted to cases in which the Courts are satisfied that there have been fraudulent and contumacious attempts to defeat the operation of decrees, the Government of India has decided to introduce a Bill giving effect tentatively and, in the first instance, within the limited area to the policy which dictated the English Act of 1869, and is believed by several authorities of weight to be applicable to India.

Provisions of Bill.

32. *Sections 1 and 2.*—It is proposed that the measure shall apply in the first instance to the North-Western Provinces and Oudh, and be extendible to other Provinces, or to particular classes of debtors in other Provinces, by Local Governments with the previous sanction of the Governor General in Council.

From the opinions recorded by the Chief Commissioner and by Mr. MacEwen, the Officiating Recorder of Rangoon, on the draft Bankruptcy Bill of 1885, and by the Recorder, Judicial Commissioner and other authorities, European and Native, on the circular of 1881, there appears to be a strong feeling in Burma in favour of abolishing imprisonment for debt where the debtor has not been guilty of fraud. But it is considered desirable that the proposed Act should apply in the first instance to the territories under one Local Government, and that its effect there should be ascertained before the Act is extended to other parts of the country.

The date on which the Act is to come into force in the North-Western Provinces and Oudh is the 1st of January 1888. If therefore the Bill is passed during the present year, decree-holders will have more than twelve months within which they may proceed against their judgment-debtors under the provisions of the Code of Civil Procedure. In England the period which elapsed between the passing and the coming into force of the Debtors Act, 1869, was less than five months.

33. *Section 4.*—This section is based on section 4 of the Debtors Act, 1869, but applies only to arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts. Clause (*c*) is specially designed to check those fraudulent alienations of property by solvent but dishonest debtors which are relied on by the opponents of any mitigation of the existing law as the main justification of imprisonment for debt.

34. *Section 5.*—This section, following the 41 & 42 Vic., c. 54, permits the Court to refuse, either absolutely or on terms, an application for the arrest or imprisonment, or for the release or discharge from arrest or imprisonment, of a defaulter who is a trustee or person acting in a fiduciary capacity and is required, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself.

The origin and object of this clause are stated as follows by Jessel, M. R., in *Marris* v. *Ingram* (L. R. 13 Ch. D. 343):—

"Then we come to the Amendment Act of 1878, which was passed to meet a special class of cases, and the history of that Act was this: An application was made before me for the imprisonment of a trustee who had been ordered to pay a sum of money. It was a very hard case, one of an unintentional breach of trust; and though the man was actually dying, I had no alternative but to make an order. Then I had various other cases before me which led me to regret that the Court had no discretion, for it not unfrequently happened that a person who came in strictness under the first class of offences* was not guilty of any moral offence. Under these circumstances I thought it would be wise and prudent that a discretion should be given to the Courts to deal with exceptional cases, but not with the intention of repealing the existing Act. Mr. Marten, being a member of the Legislature, then adopted my suggestion, and procured this Amendment Act to be passed."

* That is to say, the defaults specified in 32 & 33 Vic., c. 62, s. 4.

35. *Section 6.*—This section empowers the High Court and the Chief Controlling Revenue-authority to make rules for regulating the procedure to be followed in the Courts subordinate to them respectively in inquiries as to the liability of persons to arrest and imprisonment on the ground of fraud or contumacy.

36. *Section 7.*—This section modifies the operation of enactments authorising arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts for payment of money.

Clause (*a*), following the Code of Civil Procedure, limits the term of imprisonment to six months, notwithstanding that section 163 of the North-Western Provinces Rent Act, 1881, authorises imprisonment in certain cases for so long a period as two years.

Clause (*b*) relieves the decree-holder of the liability to maintain his judgment-debtor while in prison. If imprisonment is retained, not as a mode of enforcing payment but simply as a punishment, it will hardly be possible to continue the liability. This liability existed under the old Insolvency Law in England, and the Act to which imposed it was once described as giving the creditor "the power of imprisoning and tormenting his debtor at the expense of 3*s*. 6*d*. per week."* If it is abolished, great care should be taken that imprisonment is not inflicted except in cases of misconduct which deserve punishment.

* Hansard, 74, page 451.

Clause (*c*) requires that the defaulter, though in the civil jail, shall nevertheless be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment. Where a person is ordered to pay a fine, the nature and term of his imprisonment will be regulated by the general law. This clause relates to the other cases in which a debtor is liable to imprisonment. Those cases, as before observed, all involve some degree of delinquency (L. R. 6 Ch. 157), and the imprisonment contemplated by the Bill, as by the English Act (L. R. 13 Ch. D. 343), is simple, that is, without hard labour. The effect of this clause will be to deprive the defaulter, as a civil prisoner, of the privilege of maintaining himself, and purchasing or receiving from private sources food, clothing, bedding, and other necessaries (Act XXVI of 1870, s. 34).

Clause (*d*) provides that, except where the arrest or imprisonment is for default in payment of a fine, the defaulter, when once arrested or imprisoned, shall not be released from arrest, or discharged from prison, without the order of the Court. The Court may grant the order or refuse it. If it refuses the order, the defaulter may appeal.

Clause (*e*) so far modifies clause (29) of section 588 of the Code of Civil Procedure as to admit of an appeal being preferred from an order for imprisonment in execution of a decree.

37. *Section 8.*—This section follows section 359 of the Code of Civil Procedure in providing that where the Court is of opinion that the defaulter has been guilty of an offence against the Indian Penal Code or any special enactment for the punishment of fraudulent debtors, it may, instead of ordering his imprisonment in the civil jail, send him to a Magistrate to be dealt with according to law.

38. *Sections 9 and 10.*—These sections contain special provisions with respect to arrest before judgment, and save proceedings taken before the Act comes into force.

39. *Section 11.*—It has been decided *In re Heavens Smith* (L. R. 2 Ex. D. 47) that the English Debtors Act of 1869 does not apply to a case in which the defaulter is a debtor to the Crown. It is proposed that the Indian Act shall have the like effect as against the Crown where a decree or order for payment of money is made in its favour by a Civil or Revenue Court, as it will have against a subject.

40. The question of giving the Courts a discretionary power to refuse an order for the arrest and imprisonment of a judgment-debtor, or at least of a female judgment-debtor, will be considered when next the Code of Civil Procedure comes under revision.

(Signed) C. P. ILBERT.

The 9th June 1886.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.

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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th June, 1886:—

Bill No. 9 of 1886.

THE DEBTORS BILL, 1886.

CONTENTS.

A Bill to amend the law relating to Imprisonment for Debt.

WHEREAS it is expedient to amend the law relating to imprisonment for debt; *It* is hereby enacted as follows:—

Short title and commencement.

1. This Act may be called the Debtors Act, 1886; and it shall come into force on the first day of January 1888.

Extent.

2. (*1*) This Act shall extend, in the first instance, only to the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh.

(*2*) But any other Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, extend this Act, with effect on and from a day not less remote than one year from the date of the notification, to the whole or any specified part of the territories under its administration or to any class of debtors within the whole or any specified part of those territories.

Definition.

3. In this Act the expression "Revenue Court" means a Court having jurisdiction in suits for the rent, revenue or profits of land.

Enforcement of decree or order for money by imprisonment permissible in excepted cases only.

4. Notwithstanding anything in the Code of Civil Procedure or any other enactment, a person shall not be liable to arrest or imprisonment for default in compliance [Act XIV, 1882, s. 254: Act XII, 1881, s. 156: Act XIX, 1868, s. 109.] XIV of 1882.

with a decree or order of a Civil or Revenue Court for payment of money except in the following cases:—

[Act X, 1882, s. 480; Act XIV, 1882, ss. 170, 174 & 412.]

(a) where the order is for payment of a fine;

[32 & 33 Vic., c. 62, s. 4: Guardians and Wards Bill, 1886, s. 38.]

[L. R. 6 Ch. 156—158.]

(b) where the defaulter is a trustee or person acting in a fiduciary capacity, and the decree or order requires him, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself;

[Act XIV, 1882, s. 359.]

(c) where the Court is satisfied that, since incurring the liability in respect of which the decree or order was made, the defaulter has fraudulently transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation thereto, with the object or effect of impeding the enforcement of the decree or order by the attachment and sale of his property;

[32 & 33 Vic., c. 62, s. 5.]

(d) where the Court is satisfied that the defaulter either has, or has had since the date of the decree or order, the means to pay the money, and has refused or without reasonable cause neglected, or refuses or neglects, to pay the same.

[41 & 42 Vic., c. 54.]

Discretionary powers of Courts in some excepted cases.

5. In any case coming within the exception specified in clause (*b*) of section 4 the Court may, after inquiry into the case, grant or refuse, either absolutely or on terms, any application for the arrest or imprisonment of the defaulter, or for his release from arrest or discharge from imprisonment.

[Act XIV, 1882, s. 287: 32 & 33 Vic., c. 62, s. 5.]

Power to make rules for guidance of Courts in other excepted cases.

6. *(1)* The High Court, with respect to Courts subordinate to it, and the Chief Controlling Revenue-authority, with respect to Courts subordinate to it, may, with the approval of the Local Government and the sanction of the Governor General in Council, make rules for regulating the procedure to be observed in inquiries for determining whether the case of a defaulter for whose arrest or imprisonment application has been made is a case coming within the exceptions specified in clauses (*c*) and (*d*) of section 4, or within either of those exceptions.

(2) Rules may be made under this section—

(a) for the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, at any time after the passing of this Act, and

(b) for territories under the administration of any other Local Government, at any time after the publication of the notification extending this Act to those territories or to any class of debtors therein;

but rules so made shall not take effect until the Act comes into force in the territories for which they have been made.

(3) An authority making rules under this section shall, before making the rules, publish a draft of the proposed rules in such manner as the Governor General in Council, by notification in the *Gazette of India*, prescribes.

(4) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(5) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(6) A rule made under this section shall not take effect until it has been published in the local official Gazette.

(7) The publication in that Gazette of a rule purporting to be made under this section shall be conclusive proof that it has been duly made.

Provisions as to imprisonment under Act.

7. The operation of the enactment under which the defaulter is liable to arrest or imprisonment in any case coming within the exceptions specified in clauses (*b*), (*c*) and (*d*) of section 4, or within any of those exceptions, or is entitled to release from the arrest or discharge from the imprisonment, shall be subject to the following provisions, namely:—

(a) the defaulter may be imprisoned for such term, not exceeding six months, as the Court directs; [Act XIV, 1882, s. 342. Act XII, 1881, s. 163.]

(b) no allowance for the subsistence of the defaulter, or for supplying him with clothing or bedding, shall be payable by the person on whose application the order for the imprisonment of the defaulter is made; [Act XIV, 1882, s. 339: Act XII, 1881, ss. 165 and 166: & Act XXVI, 1870, s. 36.]

(c) during the term of his imprisonment the defaulter shall be maintained at the expense of the Government, and be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment; [L. R. 13 Ch. D. 343.]

(d) notwithstanding the payment of the money in respect of which the decree or order was made, or any arrangement for the payment thereof or proof of present inability to pay it, or any expression of intention to apply for a declaration of insolvency, or any declaration of insolvency, or any request by the person on whose application the order for the arrest or imprisonment was made, the defaulter shall not be released from arrest, or, if he is in prison and the term of his imprisonment is not fulfilled, be discharged from prison, without the order of the Court; [Act XIV, 1882, ss. 336 & 341; & Act XII, 1881, s. 163.]

(e) an appeal from the order for the imprisonment of the defaulter, and from an order refusing his release or discharge under clause (*d*) of this section, shall lie— [Act XIV, 1882, s. 588 (29).]

(i) if the Court making the order is a Civil Court subordinate for the purposes of the Code of Civil Procedure to the District Court, then to the District Court,

XIV of 1882.

(ii) if the Court making the order is any other Civil Court, then to the High Court, and

(iii) if the Court making the order is a Revenue Court, then to the authority to which appeals lie from orders of the Court relating to the execution of decrees, or, where those orders of the Court are final, to such authority as the Local Government may, by notification in the official Gazette, appoint in this behalf;

[Act XII, 1881, s. 196.]

and the order passed on the appeal shall be final.

[Act XIV, 1882, s. 622 : Act XII, 1881, s. 199.]

[Act XIV, 1882, s. 359.]

8. Where the Court is of opinion that the defaulter has been guilty of any offence under the Indian Penal Code or under any enactment for the time being in force for the punishment of fraudulent debtors, it may, if it thinks fit, instead of ordering his imprisonment under this Act, send him to a Magistrate to be dealt with according to law.

Commitment of fraudulent debtors to Magistrate.

XLV of 1860.

[Indian Bankruptcy Bill, 1886, s. 105.]

[32 & 33 Vic., c. 62, s. 6.] XIV of 1882.

9. Notwithstanding anything in Chapter XXXIV of the Code of Civil Procedure, or any other enactment, a defendant in a suit for money only who has been arrested before judgment shall not, as such, either be required to give security for his appearance at any time after the day on which judgment is given, or, if he has been committed to prison, be detained in prison after that day:

Special provisions with respect to arrest before judgment.

Provided that, if judgment is given against the defendant, and the decree-holder applies, on the day on which judgment is given, for the enforcement of the decree by the imprisonment of the judgment-debtor, the Court may require the judgment-debtor to give such security as it thinks sufficient for his appearance at any time when called upon while the application is pending, and, if he fails to give the security, may commit him to prison, or place him in the custody of an officer of the Court, until the disposal of the application.

[Act XIV, 1882, s. 349.]

10. Nothing in this Act shall affect the liability to arrest and imprisonment of any person for whose arrest in execution of a decree or order a warrant has been issued by a Civil or Revenue Court before this Act comes into force in the territory in which the Court is established.

Saving of proceedings antecedent to commencement of Act.

11. The provisions of this Act shall bind the Crown.

[L. R. 2 Ex. D. 47.]

Act to bind the Crown.

12. All powers conferred by this Act may be exercised from time to time as occasion requires.

Powers exercisable from time to time.

STATEMENT OF OBJECTS AND REASONS.

Imprisonment for Debt in India.

A decree or order for the payment of money may be enforced in India by the imprisonment of the judgment-debtor (Act XIV of 1882, s. 254). The Court has a discretionary power to refuse execution at the same time against the person and property of the judgment-debtor (s. 230), but has no discretionary power to refuse execution either against person or against property at the option of the creditor. When an application for execution of a decree is presented, it must, if it is not barred by efflux of time and is otherwise in order, be admitted, and then the Court must order execution of the decree *according to the nature of the application* (s. 245). The Court cannot refuse to issue its warrant for the execution of the decree unless it sees cause to the contrary (s. 250), and "cause to the contrary," as interpreted by the Courts, means some cause which deprives the decree-holder of the right to execute, or to execute against the party against whom execution is sought, or to execute in the mode prayed for.

2. A judgment-debtor may, when arrested, obtain immediate release by payment of the debt; but if he does not, he must be brought at once before the Court (ss. 336-337).

3. The Local Government may by notification* direct that whenever a judgment-debtor is arrested in execution of a decree for money, and brought before the Court, the Court shall inform him that he may apply, under Chapter XX of the Code, to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court (s. 336).

* Notifications have been issued under this section by all Local Governments except Hyderabad and Coorg.

4. If the judgment-debtor expresses his intention so to apply, and furnishes sufficient security that he will appear when called on, and that he will, within one month, apply to be declared an insolvent, the Court is to release him from arrest. But if he fails so to apply, the Court may either direct the security to be realised, or commit him to prison in execution of the decree (s. 336).

5. A person is not to be imprisoned in execution of a decree for more than six months, or, if the debt does not exceed fifty rupees, for more than six weeks (s. 342).

6. Whilst he is in prison, a monthly allowance must be paid for his subsistence according to scales fixed by the Local Government. The allowance is to be supplied by the decree-holder, and is to be deemed costs in the suit (ss. 338 to 340).

7. He is to be discharged from prison—

(*a*) on the amount mentioned in the warrant of committal being paid to the officer in charge of the prison, or

(*b*) on the decree being otherwise fully satisfied, or

(*c*) at the request of the person on whose application he has been imprisoned, or

(*d*) on default in the payment of the allowance for his subsistence, or

(*e*) on his being declared an insolvent, or

(*f*) on the expiration of the term of his imprisonment (s. 341).

His discharge from prison does not discharge him from his debt, but he cannot be re-arrested under the same decree (s. 341).

8. By the Presidency Small Cause Courts Act, XV of 1882, the provisions of the Code of Civil Procedure are applied, with modifications and exceptions, to the procedure in the Small Cause Courts at Calcutta, Madras and Bombay. Among the provisions not so applied are those which relate to the release of an arrested judgment-debtor on his expressing an intention to apply for a declaration of insolvency. Chapter XX of the Code, relating to insolvent judgment-debtors, is also not applied to these Courts. (See s. 23 and sched. II.)

9. The Act, however, contains certain special provisions with respect to an arrested judgment-debtor. Under section 29 the Court may release him from arrest on his giving security for payment. And under section 30, if it appears to the Court that a judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or of any instalment under the decree, the Court may, from time to time, for such time and on such terms as it thinks fit, suspend the execution of the decree, and release the debtor, or make such order as it thinks fit.

10. In the four districts of the Dekkhan to which the Dekkhan Agriculturists' Relief Acts apply arrest and imprisonment for debt have been abolished in the case of agriculturists.* And certain special Acts for the relief of embarrassed landholders contain provisions protecting the debtor from arrest or imprisonment in respect of the debts to which the Acts apply.

* "No agriculturist shall be arrested or imprisoned in execution of a decree for money passed whether before or after this Act comes into force."—(Act XVII of 1879, s. 21, as amended by Act XXII of 1882, s. 8.)

Imprisonment for Debt in England.

11. Imprisonment for debt was abolished in England by the Debtors Act of 1869 (32 & 33 Vic., c. 62), except in the following cases:—

(1) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of a contract;

(2) default in payment of a sum recoverable summarily before a Justice or Justices of the Peace;

(3) default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of Equity any sum in his possession or under his control;

(4) default by a solicitor in payment of costs, when ordered to pay costs for misconduct as such, or in payment of a sum of money, when ordered to pay the same in his character of an officer of the Court;

(5) default in payment for the benefit of creditors of any portion of a salary or other income, in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order;

(6) default in payment of sums in respect of the payment of which orders may be made under the Act (that is, cases of contumacious refusal under section 5 of the Act, see para. 14).

12. The term of imprisonment in these excepted cases must not exceed one year (s. 4).

13. In cases (3) and (4) the Court has power to enquire into the case, and at discretion to grant or refuse an order for arrest or imprisonment (41 & 42 Vic., c. 54, s. 1).

14. Under section 5 of the Act of 1869, a Court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt, or instalment of any debt, due from him in pursuance of any order or judgment of that or any other competent Court. But the power is not to be exercised unless it is proved to the satisfaction of the Court that the person making default has, or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected to pay it. "Proof of the means of the person making default may be given in such manner as the Court thinks just, and for the purposes of such proof the debtor and witnesses may be summoned and examined on oath, according to the prescribed rules." A summons under this section is usually called a judgment summons.

15. It will be observed that all the cases in which a debtor is liable to imprisonment under the Act of 1869 involve some degree of delinquency.† And it has been held by high authority‡ that the Act was distinctly intended for the purpose of punishing fraudulent or dishonest debtors.

† Lord Hatherley, L. C., in *Middleton* v. *Chichester*, L. R. 6 Ch. 152.

‡ Jessel, M. R., in *Marris* v. *Ingram*, L. R. 13 Ch. Div. 338.

16. Sums recoverable summarily before Justices, or, as they are called in modern statutory language, Courts of summary jurisdiction, are usually fines. But as ordinary civil debts are in some cases so recoverable, it has been provided by the Summary Jurisdiction Act, 1879 (42 & 43 Vic., c. 49, section 35) that an order of a Court of summary jurisdiction for the payment of a civil debt is not to be enforced by imprisonment, unless the case is such as would make the debtor liable to imprisonment under section 5 of the Debtors Act, 1869..

Imprisonment for Debt in Scotland.

17. In Scotland imprisonment for debt for sums under £8-6-8 was abolished in 1835 by 5 & 6 Wm. IV, c. 70, but alimentary debts (that is, debts for the support of the debtor's wife or children) were excepted from the operation of that Statute. In 1880 was passed the Debtors (Scotland) Act, 1880 (43 & 44 Vic., c. 34), which enacts, by section 4, that,

"with the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be apprehended or imprisoned on account of any civil debt.

"There shall be excepted from the operation of the above enactment—

(1) taxes, fines or penalties due to Her Majesty, and rates and assessments lawfully imposed or to be imposed;

(2) sums decreed for aliment:

"Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than twelve months."

The same Act contains provisions for the relief of insolvent debtors and for the punishment of fraudulent debtors.

18. By the Civil Imprisonment (Scotland) Act, 1882 (45 & 46 Vic., c. 42), imprisonment for alimentary debts was abolished, except in cases where there is a wilful failure to obey the decree for the debt (ss. 3 and 4), and the maximum term of imprisonment for failure to pay rates or assessments was reduced to six weeks (s. 5).

Imprisonment for Debt in Ireland.

19. In Ireland the law as to imprisonment for debt is regulated by the Debtors Act (Ireland), 1872 (35 & 36 Vic., c. 57), as amended by 41 & 42 Vic., c. 54, and is practically identical with the English law.

Proposals for amendment of Indian Law.

20. On the 17th November, 1881, a circular was addressed by the Government of India to all Local Governments and Administrations, stating that the Government of India had under consideration the question of amending the provisions of the Code of Civil Procedure bearing upon the question of the arrest of *pardánashin* women in execution of the decrees of Civil Courts, but that before coming to any final conclusion on the subject the Governor General in Council thought it desirable to deal with the larger question of abolishing imprisonment for debt, and for this purpose to enquire whether sufficient reasons exist for the continued maintenance in India of the present system. Local Governments and Administrations were accordingly requested to favour the Government of India with a full expression of their opinion on the matter.

21. The replies to the circular disclosed much difference of opinion as regards the advisability of maintaining in India the present system of imprisonment for debt.

22. In favour of the maintenance under existing circumstances of the present system of imprisonment for debt were the Madras Government, the Madras High Court, the Bombay Government, the Bombay High Court, the Calcutta High Court, the Calcutta Chamber of Commerce and the Trades Association, Calcutta (unless a change were accompanied by the enactment of a stringent bankruptcy law), the British Indian Association, Calcutta, the Board of Revenue, North-Western Provinces, the Punjab Chief Court, the Chief Commissioner of the Central Provinces, the Chief Commissioner of Assam (provided the law were so altered as to permit the issue of process against the person only after all means of realising the decree by process against property have been exhausted), and the Chief Commissioner and the Judicial Commissioner of Coorg. The arguments which they advanced appear to be in the main the following:—

(*a*) that the total abolition of imprisonment for debt in India would be premature, and would remove from the Statute Book the only check upon the fraudulent alienation of property by solvent but dishonest debtors;

(*b*) that legislation has proceeded quite far enough in relief of the judgment-debtor, while there are in India special difficulties in executing a decree by attachment of property when the judgment-creditor is a member of an undivided* family. Creditors are not, it is said, in the habit of proceeding to extremities unless the debtor has the means of liquidating a portion at least of the debt. The men who go to prison are for the most part those who obstinately refuse to pay their debts, and cases of imprisonment for debt are not numerous;

* Sir C. Sargent, of the Bombay High Court, wrote:—
"The legal incidents of the undivided Hindu family, the minute distribution of property caused by the Muhammadan law of descent, and, though last not least, the practice of creating benami titles so common in this country, afford the dishonest debtor endless opportunities of baffling the efforts of the judgment-creditor to attach his property."

(c) that the abolition of imprisonment for debt would deprive lenders of personal security, would thereby depreciate credit, and would involve an increase in the rate of interest, already very high. In the case of agriculturists this might seriously impair their ability to pay the land-revenue;

(d) that abolition of imprisonment for debt should only be attempted when the habits of secrecy, engendered by centuries of oppression, have partly worn away, and when transactions are open and the registration of deeds and bonds has become habitual. When the debtor's property can be easily traced and seized in execution of a decree, then it will be reasonable and right to withhold execution on the body of a pauper debtor except as a distinctly exceptional and penal measure in the case of fraud.

23. In support of the abolition of imprisonment for debt were the following authorities :—

(a) the Advocate General of Bengal, who advocated the introduction of the English system, because there is no reason why the matter should not be regulated in India as in England, if proper exceptions and limitations, as contained in the English Debtors Act of 1869, are prescribed, and because the abolition of imprisonment for debt would not cause any public injury, while, on the other hand, the present system in most instances operates only as a means of oppression, to the total ruin of the party imprisoned and of his family;

(b) the Bengal Government, which, while not prepared to resist the opinions of the local officers that abolition would at present be premature, thought that, if an alteration of the bankruptcy law were at any time undertaken, measures might then be adopted for the abolition of imprisonment for debt in cases where fraud is not established against the judgment-debtor;

(c) the North-Western Provinces and Oudh Government, which regarded the existing practice of placing in the creditor's hands the power of selecting his own method of coercion as a relic of the old semi-barbarous debt laws which has now been eliminated from almost every civilized code of judicial procedure. The present system operates with severity against all debtors, honest and dishonest, indiscriminately. The power of subjecting a debtor to arrest and imprisonment should be entrusted *not* to the decree-holder, but to the Courts, and its exercise should be limited to cases where clear proof exists of fraudulent and contumacious attempts on the part of the judgment-debtor to defeat the operation of a decree. Imprisonment is especially hard on the cultivator and working-man, whom it deprives of their means of subsistence and of providing for their families;

(d) the North-Western Provinces High Court, which advocated the abolition of imprisonment for debt, as it is doubtful whether "any useful purpose is served by the perpetuation in this country of that remnant of barbarism";

(e) the Punjab Government, which believed that there is some reason to fear that, under the present system, creditors occasionally make use of the law to gratify vindictive feelings or personal spite, and to coerce debtors to sell their land and property at a price below its proper value or to relinquish their just rights. Discretionary power ought to be expressly allowed to the Civil Courts, imprisonment not being resorted to as an ordinary process of execution of a decree, unless the Court is satisfied that there has been fraud or wilful concealment of property;

(f) the Chief Commissioner of British Burma, who pointed out that the imprisonment of debtors who are paupers, but who are not fraudulent, does no real good to any class, works directly and indirectly great harm to the poorer classes, and causes a distinct loss to the community at large. The practice of permitting such imprisonment has been gradually circumscribed among other civilized nations; among some nations it has absolutely ceased; and there is no reason why the way should not be paved for the disappearance of the system in India. Civil Courts should be allowed to grant execution against the body of judgment-debtors against whom there might be *primâ facie* ground for presuming fraud or bad conduct, unless the presumption were rebutted by the judgment-debtor;

(g) the Judicial Commissioner of British Burma and the Recorder of Rangoon, who were of opinion that imprisonment for debt should be abolished, except in case of fraud, which should be punished criminally. The Recorder recommended that the law as it now obtains in England should be applied to India;

(h) the Resident at Hyderabad, who considered that the present system of imprisonment for debt is not wanted to compel payment, while it may be used to bring undue pressure to bear upon a debtor, especially in an agricultural country where interest in land is generally given as security for debts. He recommended that imprisonment for debt should be retained only to meet cases in which debtors abscond or endeavour to fraudulently evade meeting their obligations.

24. Thus, the preponderance of opinion was on the whole in favour of the maintenance of imprisonment for debt under the present condition of India, but a considerable and influential minority were in favour of its abolition.

25. The arguments on which the upholders of the present system rely fall into two classes: first arguments which, if valid at all, are valid for England as well as for India; and secondly, arguments based on the special circumstances and conditions of India.

26. To arguments of the first class belongs the assertion that "to remove from the Statute Book the penalty of arrest and imprisonment in execution of a decree for money would be to paralyze the commerce and trade of the country." The same objection was made in England, first to the abolition of arrest on mesne process, * and afterwards to the abolition of arrest on final process. The power of arrest was removed, and neither commerce nor trade showed any symptoms of paralysis.

* See Lord Cottenham's speech in 1844 on the Creditors and Debtors Bill; Hansard, 74, page 453.

27. Those who uphold imprisonment for debt, not as being generally expedient, but as being specially required for India, do so mainly on two grounds: first, the complexity and obscurity of Indian titles to property; and, secondly, the exceptional prevalence of fraud in India, and the exceptional difficulties of detecting it.

As to the first ground, it has been remarked that if it is wrong to allow a debtor to pledge his person as security for his debts, it is not the less wrong because, owing to the defect of Indian property law, he finds difficulty in giving a satisfactory security over his property.

In the argument based on the prevalence of, and difficulty of detecting fraud, there is undoubtedly much force, though it may be doubted whether the obstacles which can be placed in the way of a creditor realizing his debts are not as great in England as in India. But, however this may be, to make an honest, though needy, debtor liable to imprisonment, simply because fraudulent debtors are numerous and difficult to detect, appears to be as unjust as it would be to make homicide by misadventure punishable by death, simply because the crime of murder was rife and hard to prove.

28. There are in the opinion of the Government of India two principles which ought to be observed in every law of debtor and creditor. The Courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessaries of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the Courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all. Experience acquired in the Dekkhan goes to show that these principles are as applicable to India as to England. The Code of Civil Procedure recognises one of these principles by exempting from seizure for debt the debtor's bare means of subsistence. But this recognition is nullified by the refusal to adopt the principle of exempting the debtor's person from seizure. Of what use is it to reserve by law to the debtor the bare necessaries of life, when he can be compelled to give them up by the threat of imprisonment? By those who advocate the retention of the present system, much reliance is placed on the very small proportion of actual imprisonments to warrants of arrest; and the inference drawn from this proportion is that the law, though harsh in theory, produces no hardships in practice. But there is reason to believe that, in the great majority of cases, exemption from arrest is purchased either by renewal of bonds on extortionate terms, or by surrender of property which the law has exempted from seizure, or by surrender of property which does not belong to the debtor at all, but to his relations or friends. In other words, the law enables a creditor to do indirectly what it forbids him to do directly.

29. It is said that the honest debtor has an easy way out of prison through the door of insolvency. But in the first place, the honest debtor ought not to be sent to prison at all; and in the next place, the door which is provided for his release is, for some reason or other, very rarely used. There is, or was until recently, a strong concurrence of opinion to the effect that the Insolvency Chapter of the Code of Civil Procedure is practically a dead letter. As to the causes of its failure,—whether it is to be accounted for by the preliminary proceedings being unnecessarily cumbrous or expensive, or by the difficulty of satisfying the Court under section 351 that the debtor has not been guilty of any kind of misconduct, or by ignorance of the law and of the modes of relief available to debtors,—opinions differ; but about the fact of failure there appears to be no difference.

30. Since 1883 the Government of India has received and published reports obtained from Her Majesty's representatives abroad on the systems of imprisonment for debt in force in the various countries to which they are accredited. Those reports showed that imprisonment for debt has been abolished in nearly all civilized countries.

31. Having regard to the state of the law in the United Kingdom, to those reports, to the success which has attended the abolition of imprisonment for debt in the case of agriculturists to whom the Dekkhan Agriculturists' Relief Acts apply, to some expressions to be found in the opinions of the authorities who considered the draft Bankruptcy Bill of 1885, and to the advocacy by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, and by the Chief Justice and Judges of the High Court of Judicature for the North-Western Provinces, of the entire abolition of the process of arrest for debt, so far as it is a process that can be set in motion at the discretion of the creditor, and of the enforcement of the process being restricted to cases in which the Courts are satisfied that there have been fraudulent and contumacious attempts to defeat the operation of decrees, the Government of India has decided to introduce a Bill giving effect tentatively and, in the first instance, within a limited area to the policy which dictated the English Act of 1869, and is believed by several authorities of weight to be applicable to India.

Provisions of Bill.

32. *Sections 1 and 2.*—It is proposed that the measure shall apply in the first instance to the North-Western Provinces and Oudh, and be extendible to other Provinces, or to particular classes of debtors in other Provinces, by Local Governments with the previous sanction of the Governor General in Council.

From the opinions recorded by the Chief Commissioner and by Mr. MacEwen, the Officiating Recorder of Rangoon, on the draft Bankruptcy Bill of 1885, and by the Recorder, Judicial Commissioner and other authorities, European and Native, on the circular of 1881, there appears to be a strong feeling in Burma in favour of abolishing imprisonment for debt where the debtor has not been guilty of fraud. But it is considered desirable that the proposed Act should apply in the first instance to the territories under one Local Government, and that its effect there should be ascertained before the Act is extended to other parts of the country.

The date on which the Act is to come into force in the North-Western Provinces and Oudh is the 1st of January 1888. If therefore the Bill is passed during the present year, decree-holders will have more than twelve months within which they may proceed against their judgment-debtors under the provisions of the Code of Civil Procedure. In England the period which elapsed between the passing and the coming into force of the Debtors Act, 1869, was less than five months.

33. *Section 4.*—This section is based on section 4 of the Debtors Act, 1869, but applies only to arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts. Clause (*c*) is specially designed to check those fraudulent alienations of property by solvent but dishonest debtors which are relied on by the opponents of any mitigation of the existing law as the main justification of imprisonment for debt.

34. *Section 5.*—This section, following the 41 & 42 Vic., c. 54, permits the Court to refuse, either absolutely or on terms, an application for the arrest or imprisonment, or for the release or discharge from arrest or imprisonment, of a defaulter who is a trustee or person acting in a fiduciary capacity and is required, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself.

The origin and object of this clause are stated as follows by Jessel, M. R., in *Marris* v. *Ingram* (L. R. 13 Ch. D. 343):—

"Then we come to the Amendment Act of 1878, which was passed to meet a special class of cases, and the history of that Act was this: An application was made before me for the imprisonment of a trustee who had been ordered to pay a sum of money. It was a very hard case, one of an unintentional breach of trust; and though the man was actually dying, I had no alternative but to make an order. Then I had various other cases before me which led me to regret that the Court had no discretion, for it not unfrequently happened that a person who came in strictness under the first class of offences* was not guilty of any moral offence. Under these circumstances I thought it would be wise and prudent that a discretion should be given to the Courts to deal with exceptional cases, but not with the intention of repealing the existing Act. Mr. Marten, being a member of the Legislature, then adopted my suggestion, and procured this Amendment Act to be passed."

* That is to say, the defaults specified in 32 & 33 Vic., c. 62, s. 4.

35. *Section 6.*—This section empowers the High Court and the Chief Controlling Revenue-authority to make rules for regulating the procedure to be followed in the Courts subordinate to them respectively in inquiries as to the liability of persons to arrest and imprisonment on the ground of fraud or contumacy.

36. *Section 7.*—This section modifies the operation of enactments authorising arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts for payment of money.

Clause (*a*), following the Code of Civil Procedure, limits the term of imprisonment to six months, notwithstanding that section 163 of the North-Western Provinces Rent Act, 1881, authorises imprisonment in certain cases for so long a period as two years.

Clause (*b*) relieves the decree-holder of the liability to maintain his judgment-debtor while in prison. If imprisonment is retained, not as a mode of enforcing payment but simply as a punishment, it will hardly be possible to continue the liability. This liability existed under the old Insolvency Law in England, and the Act which imposed it was once described as giving the creditor "the power of imprisoning and tormenting his debtor at the expense of 3*s.* 6*d.* per week."* If it is abolished, great care should be taken that imprisonment is not inflicted except in cases of misconduct which deserve punishment.

* Hansard, 74, page 451.

Clause (*c*) requires that the defaulter, though in the civil jail, shall nevertheless be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment. Where a person is ordered to pay a fine, the nature and term of his imprisonment will be regulated by the general law. This clause relates to the other cases in which a debtor is liable to imprisonment. Those cases, as before observed, all involve some degree of delinquency (L. R. 6 Ch. 157), and the imprisonment contemplated by the Bill, as by the English Act (L. R. 13 Ch. D. 343), is simple, that is, without hard labour. The effect of this clause will be to deprive the defaulter, as a civil prisoner, of the privilege of maintaining himself, and purchasing or receiving from private sources food, clothing, bedding, and other necessaries (Act XXVI of 1870, s. 34).

Clause (*d*) provides that, except where the arrest or imprisonment is for default in payment of a fine, the defaulter, when once arrested or imprisoned, shall not be released from arrest, or discharged from prison, without the order of the Court. The Court may grant the order or refuse it. If it refuses the order, the defaulter may appeal.

Clause (*e*) so far modifies clause (29) of section 588 of the Code of Civil Procedure as to admit of an appeal being preferred from an order for imprisonment in execution of a decree.

37. *Section 8.*—This section follows section 359 of the Code of Civil Procedure in providing that where the Court is of opinion that the defaulter has been guilty of an offence against the Indian Penal Code or any special enactment for the punishment of fraudulent debtors, it may, instead of ordering his imprisonment in the civil jail, send him to a Magistrate to be dealt with according to law.

38. *Sections 9 and 10.*—These sections contain special provisions with respect to arrest before judgment, and save proceedings taken before the Act comes into force.

39. *Section 11.*—It has been decided *In re Heavens Smith* (L. R. 2 Ex. D. 47) that the English Debtors Act of 1869 does not apply to a case in which the defaulter is a debtor to the Crown. It is proposed that the Indian Act shall have the like effect as against the Crown where a decree or order for payment of money is made in its favour by a Civil or Revenue Court, as it will have against a subject.

40. The question of giving the Courts a discretionary power to refuse an order for the arrest and imprisonment of a judgment-debtor, or at least of a female judgment-debtor, will be considered when next the Code of Civil Procedure comes under revision.

(Signed) C. P. ILBERT.

The 9th June 1886.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.

VI.—57—3

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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th June, 1886:—

Bill No. 9 of 1886.

THE DEBTORS BILL, 1886.

CONTENTS.

A Bill to amend the law relating to Imprisonment for Debt.

WHEREAS it is expedient to amend the law relating to imprisonment for debt; It is hereby enacted as follows:—

Short title and commencement.

1. This Act may be called the Debtors Act, 1886; and it shall come into force on the first day of January 1888.

Extent.

2. (*1*) This Act shall extend, in the first instance, only to the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh.

(*2*) But any other Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, extend this Act, with effect on and from a day not less remote than one year from the date of the notification, to the whole or any specified part of the territories under its administration or to any class of debtors within the whole or any specified part of those territories.

Definition.

3. In this Act the expression "Revenue Court" means a Court having jurisdiction in suits for the rent, revenue or profits of land.

Enforcement of decree or order for money by imprisonment permissible in excepted cases only.

4. Notwithstanding anything in the Code of Civil Procedure or any other enactment, a person shall not be liable to arrest or imprisonment for default in compliance [Act XIV, 1882, s. 254; Act XII, 1881, s. 156: Act XIX, 1868, s. 109.] XIV of 1882.

with a decree or order of a Civil or Revenue Court for payment of money except in the following cases:—

[Act X, 1882, s. 480: Act XIV, 1882, ss. 170, 174 & 412.]

(a) where the order is for payment of a fine;

[32 & 33 Vic., c. 62, s. 4: Guardians and Wards Bill, 1886, s. 38.]

[L. R. 6 Ch. 156—158.]

(b) where the defaulter is a trustee or person acting in a fiduciary capacity, and the decree or order requires him, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself;

[Act XIV, 1882, s. 339.]

(c) where the Court is satisfied that, since incurring the liability in respect of which the decree or order was made, the defaulter has fraudulently transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation thereto, with the object or effect of impeding the enforcement of the decree or order by the attachment and sale of his property;

[32 & 33 Vic., c. 62, s. 5.]

(d) where the Court is satisfied that the defaulter either has, or has had since the date of the decree or order, the means to pay the money, and has refused or without reasonable cause neglected, or refuses or neglects, to pay the same.

[41 & 42 Vic., c. 54.]

Discretionary powers of Courts in some excepted cases.

5. In any case coming within the exception specified in clause (*b*) of section 4 the Court may, after inquiry into the case, grant or refuse, either absolutely or on terms, any application for the arrest or imprisonment of the defaulter, or for his release from arrest or discharge from imprisonment.

[Act XIV, 1882, s. 287: 32 & 33 Vic., c. 62, s. 5.]

Power to make rules for guidance of Courts in other excepted cases.

6. *(1)* The High Court, with respect to Courts subordinate to it, and the Chief Controlling Revenue-authority, with respect to Courts subordinate to it, may, with the approval of the Local Government and the sanction of the Governor General in Council, make rules for regulating the procedure to be observed in inquiries for determining whether the case of a defaulter for whose arrest or imprisonment application has been made is a case coming within the exceptions specified in clauses (*c*) and (*d*) of section 4, or within either of those exceptions.

(2) Rules may be made under this section—

(a) for the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, at any time after the passing of this Act, and

(b) for territories under the administration of any other Local Government, at any time after the publication of the notification extending this Act to those territories or to any class of debtors therein;

but rules so made shall not take effect until the Act comes into force in the territories for which they have been made.

(3) An authority making rules under this section shall, before making the rules, publish a draft of the proposed rules in such manner as the Governor General in Council, by notification in the *Gazette of India*, prescribes.

(4) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(5) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(6) A rule made under this section shall not take effect until it has been published in the local official Gazette.

(7) The publication in that Gazette of a rule purporting to be made under this section shall be conclusive proof that it has been duly made.

Provisions as to imprisonment under Act.

7. The operation of the enactment under which the defaulter is liable to arrest or imprisonment in any case coming within the exceptions specified in clauses (*b*), (*c*) and (*d*) of section 4, or within any of those exceptions, or is entitled to release from the arrest or discharge from the imprisonment, shall be subject to the following provisions, namely:—

(*a*) the defaulter may be imprisoned for such term, not exceeding six months, as the Court directs; [Act XIV, 1882, s. 342. Act XII, 1881, s. 163.]

(*b*) no allowance for the subsistence of the defaulter, or for supplying him with cloth-ing or bedding, shall be payable by the person on whose application the order for the imprisonment of the defaulter is made; [Act XIV, 1882, s. 339: Act XII, 1881, ss. 165 and 166: & Act XXVI, 1870, s. 36.]

(*c*) during the term of his imprisonment the defaulter shall be maintained at the expense of the Government, and be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment; [L. R. 13 Ch. D. 343.]

(*d*) notwithstanding the payment of the money in respect of which the decree or order was made, or any arrangement for the payment thereof or proof of present inability to pay it, or any expression of intention to apply for a declaration of insolvency, or any declaration of insolvency, or any request by the person on whose application the order for the arrest or imprisonment was made, the defaulter shall not be released from arrest, or, if he is in prison and the term of his imprisonment is not fulfilled, be discharged from prison, without the order of the Court; [Act XIV, 1882, ss. 336 & 341; & Act XII, 1881, s. 163.]

(*e*) an appeal from the order for the imprisonment of the defaulter, and from an order refusing his release or discharge under clause (*d*) of this section, shall lie— [Act XIV, 1882, s. 588 (29).]

(i) if the Court making the order is a Civil Court subordinate for the purposes of the Code of Civil Procedure to the District Court, then to the District Court,

XIV of 1882.

(ii) if the Court making the order is any other Civil Court, then to the High Court, and

(iii) if the Court making the order is a Revenue Court, then to the authority to which appeals lie from orders of the Court relating to the execution of decrees, or, where those orders of the Court are final, to such authority as the Local Government may, by notification in the official Gazette, appoint in this behalf;

[Act XII, 1881, s. 196.]

and the order passed on the appeal shall be final.

[Act XIV, 1882, s. 622 : Act XII, 1881, s. 199.]

[Act XIV, 1882, s. 359.]

8. Where the Court is of opinion that the defaulter has been guilty of any offence under the Indian Penal Code or under any enactment for the time being in force for the punishment of fraudulent debtors, it may, if it thinks fit, instead of ordering his imprisonment under this Act, send him to a Magistrate to be dealt with according to law.

Commitment of fraudulent debtors to Magistrate.

XLV of 1860.

[Indian Bankruptcy Bill, 1886, s. 105.]

[32 & 33 Vic., c. 62, s. 6.] XIV of 1882.

9. Notwithstanding anything in Chapter XXXIV of the Code of Civil Procedure, or any other enactment, a defendant in a suit for money only who has been arrested before judgment shall not, as such, either be required to give security for his appearance at any time after the day on which judgment is given, or, if he has been committed to prison, be detained in prison after that day:

Special provisions with respect to arrest before judgment.

Provided that, if judgment is given against the defendant, and the decree-holder applies, on the day on which judgment is given, for the enforcement of the decree by the imprisonment of the judgment-debtor, the Court may require the judgment-debtor to give such security as it thinks sufficient for his appearance at any time when called upon while the application is pending, and, if he fails to give the security, may commit him to prison, or place him in the custody of an officer of the Court, until the disposal of the application.

[Act XIV, 1882, s. 349.]

10. Nothing in this Act shall affect the liability to arrest and imprisonment of any person for whose arrest in execution of a decree or order a warrant has been issued by a Civil or Revenue Court before this Act comes into force in the territory in which the Court is established.

Saving of proceedings antecedent to commencement of Act.

11. The provisions of this Act shall bind the Crown.

[L. R. 2 Ex. D. 47.]

Act to bind the Crown.

12. All powers conferred by this Act may be exercised from time to time as occasion requires.

Powers exercisable from time to time.

STATEMENT OF OBJECTS AND REASONS.

Imprisonment for Debt in India.

A decree or order for the payment of money may be enforced in India by the imprisonment of the judgment-debtor (Act XIV of 1882, s. 254). The Court has a discretionary power to refuse execution at the same time against the person and property of the judgment-debtor (s. 230), but has no discretionary power to refuse execution either against person or against property at the option of the creditor. When an application for execution of a decree is presented, it must, if it is not barred by efflux of time and is otherwise in order, be admitted, and then the Court must order execution of the decree *according to the nature of the application* (s. 245). The Court cannot refuse to issue its warrant for the execution of the decree unless it sees cause to the contrary (s. 250), and "cause to the contrary," as interpreted by the Courts, means some cause which deprives the decree-holder of the right to execute, or to execute against the party against whom execution is sought, or to execute in the mode prayed for.

2. A judgment-debtor may, when arrested, obtain immediate release by payment of the debt; but if he does not, he must be brought at once before the Court (ss. 336-337).

3. The Local Government may by notification* direct that whenever a judgment-debtor is arrested in execution of a decree for money, and brought before the Court, the Court shall inform him that he may apply, under Chapter XX of the Code, to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court (s. 336).

* Notifications have been issued under this section by all Local Governments except Hyderabad and Coorg.

4. If the judgment-debtor expresses his intention so to apply, and furnishes sufficient security that he will appear when called on, and that he will, within one month, apply to be declared an insolvent, the Court is to release him from arrest. But if he fails so to apply, the Court may either direct the security to be realised, or commit him to prison in execution of the decree (s. 336).

5. A person is not to be imprisoned in execution of a decree for more than six months, or, if the debt does not exceed fifty rupees, for more than six weeks (s. 342).

6. Whilst he is in prison, a monthly allowance must be paid for his subsistence according to scales fixed by the Local Government. The allowance is to be supplied by the decree-holder, and is to be deemed costs in the suit (ss. 338 to 340).

7. He is to be discharged from prison—

(*a*) on the amount mentioned in the warrant of committal being paid to the officer in charge of the prison, or

(*b*) on the decree being otherwise fully satisfied, or

(*c*) at the request of the person on whose application he has been imprisoned, or

(*d*) on default in the payment of the allowance for his subsistence, or

(*e*) on his being declared an insolvent, or

(*f*) on the expiration of the term of his imprisonment (s. 341).

His discharge from prison does not discharge him from his debt, but he cannot be re-arrested under the same decree (s. 341).

8. By the Presidency Small Cause Courts Act, XV of 1882, the provisions of the Code of Civil Procedure are applied, with modifications and exceptions, to the procedure in the Small Cause Courts at Calcutta, Madras and Bombay. Among the provisions not so applied are those which relate to the release of an arrested judgment-debtor on his expressing an intention to apply for a declaration of insolvency. Chapter XX of the Code, relating to insolvent judgment-debtors, is also not applied to these Courts. (See s. 23 and sched. II.)

9. The Act, however, contains certain special provisions with respect to an arrested judgment-debtor. Under section 29 the Court may release him from arrest on his giving security for payment. And under section 30, if it appears to the Court that a judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or of any instalment under the decree, the Court may, from time to time, for such time and on such terms as it thinks fit, suspend the execution of the decree, and release the debtor, or make such order as it thinks fit.

10. In the four districts of the Dekkhan to which the Dekkhan Agriculturists' Relief Acts apply arrest and imprisonment for debt have been abolished in the case of agriculturists.* And certain special Acts for the relief of embarrassed landholders contain provisions protecting the debtor from arrest or imprisonment in respect of the debts to which the Acts apply.

* "No agriculturist shall be arrested or imprisoned in execution of a decree for money passed whether before or after this Act comes into force."—(Act XVII of 1879, s. 21, as amended by Act XXII of 1882, s. 8.)

Imprisonment for Debt in England.

11. Imprisonment for debt was abolished in England by the Debtors Act of 1869 (32 & 33 Vic., c. 62), except in the following cases:—

(1) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of a contract;

(2) default in payment of a sum recoverable summarily before a Justice or Justices of the Peace;

(3) default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of Equity any sum in his possession or under his control;

(4) default by a solicitor in payment of costs, when ordered to pay costs for misconduct as such, or in payment of a sum of money, when ordered to pay the same in his character of an officer of the Court;

(5) default in payment for the benefit of creditors of any portion of a salary or other income, in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order;

(6) default in payment of sums in respect of the payment of which orders may be made under the Act (that is, cases of contumacious refusal under section 5 of the Act, see para. 14).

12. The term of imprisonment in these excepted cases must not exceed one year (s. 4).

13. In cases (3) and (4) the Court has power to enquire into the case, and at discretion to grant or refuse an order for arrest or imprisonment (41 & 42 Vic., c. 54, s. 1).

14. Under section 5 of the Act of 1869, a Court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt, or instalment of any debt, due from him in pursuance of any order or judgment of that or any other competent Court. But the power is not to be exercised unless it is proved to the satisfaction of the Court that the person making default has, or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected to pay it. "Proof of the means of the person making default may be given in such manner as the Court thinks just, and for the purposes of such proof the debtor and witnesses may be summoned and examined on oath, according to the prescribed rules." A summons under this section is usually called a judgment summons.

15. It will be observed that all the cases in which a debtor is liable to imprisonment under the Act of 1869 involve some degree of delinquency.† And it has been held by high authority‡ that the Act was distinctly intended for the purpose of punishing fraudulent or dishonest debtors.

† Lord Hatherley, L. C., in *Middleton v. Chichester*, L. R. 6 Ch. 152.

‡ Jessel, M. R., in *Marris* v. *Ingram*, L. R. 13 Ch. Div. 338.

16. Sums recoverable summarily before Justices, or, as they are called in modern statutory language, Courts of summary jurisdiction, are usually fines. But as ordinary civil debts are in some cases so recoverable, it has been provided by the Summary Jurisdiction Act, 1879 (42 & 43 Vic., c. 49, section 35) that an order of a Court of summary jurisdiction for the payment of a civil debt is not to be enforced by imprisonment, unless the case is such as would make the debtor liable to imprisonment under section 5 of the Debtors Act, 1869.

Imprisonment for Debt in Scotland.

17. In Scotland imprisonment for debt for sums under £8-6-8 was abolished in 1835 by 5 & 6 Wm. IV, c. 70, but alimentary debts (that is, debts for the support of the debtor's wife or children) were excepted from the operation of that Statute. In 1880 was passed the Debtors (Scotland) Act, 1880 (43 & 44 Vic., c. 34), which enacts, by section 4, that,

"with the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be apprehended or imprisoned on account of any civil debt.

"There shall be excepted from the operation of the above enactment—

(1) taxes, fines or penalties due to Her Majesty, and rates and assessments lawfully imposed or to be imposed;

(2) sums decreed for aliment:

"Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than twelve months."

The same Act contains provisions for the relief of insolvent debtors and for the punishment of fraudulent debtors.

18. By the Civil Imprisonment (Scotland) Act, 1882 (45 & 46 Vic., c. 42), imprisonment for alimentary debts was abolished, except in cases where there is a wilful failure to obey the decree for the debt (ss. 3 and 4), and the maximum term of imprisonment for failure to pay rates or assessments was reduced to six weeks (s. 5).

Imprisonment for Debt in Ireland.

19. In Ireland the law as to imprisonment for debt is regulated by the Debtors Act (Ireland), 1872 (35 & 36 Vic., c. 57), as amended by 41 & 42 Vic., c. 54, and is practically identical with the English law.

Proposals for amendment of Indian Law.

20. On the 17th November, 1881, a circular was addressed by the Government of India to all Local Governments and Administrations, stating that the Government of India had under consideration the question of amending the provisions of the Code of Civil Procedure bearing upon the question of the arrest of *pardánashin* women in execution of the decrees of Civil Courts, but that before coming to any final conclusion on the subject the Governor General in Council thought it desirable to deal with the larger question of abolishing imprisonment for debt, and for this purpose to enquire whether sufficient reasons exist for the continued maintenance in India of the present system. Local Governments and Administrations were accordingly requested to favour the Government of India with a full expression of their opinion on the matter.

21. The replies to the circular disclosed much difference of opinion as regards the advisability of maintaining in India the present system of imprisonment for debt.

22. In favour of the maintenance under existing circumstances of the present system of imprisonment for debt were the Madras Government, the Madras High Court, the Bombay Government, the Bombay High Court, the Calcutta High Court, the Calcutta Chamber of Commerce and the Trades Association, Calcutta (unless a change were accompanied by the enactment of a stringent bankruptcy law), the British Indian Association, Calcutta, the Board of Revenue, North-Western Provinces, the Punjab Chief Court, the Chief Commissioner of the Central Provinces, the Chief Commissioner of Assam (provided the law were so altered as to permit the issue of process against the person only after all means of realising the decree by process against property have been exhausted), and the Chief Commissioner and the Judicial Commissioner of Coorg. The arguments which they advanced appear to be in the main the following:—

(*a*) that the total abolition of imprisonment for debt in India would be premature, and would remove from the Statute Book the only check upon the fraudulent alienation of property by solvent but dishonest debtors;

(*b*) that legislation has proceeded quite far enough in relief of the judgment-debtor, while there are in India special difficulties in executing a decree by attachment of property when the judgment-creditor is a member of an undivided* family. Creditors are not, it is said, in the habit of proceeding to extremities unless the debtor has the means of liquidating a portion at least of the debt. The men who go to prison are for the most part those who obstinately refuse to pay their debts, and cases of imprisonment for debt are not numerous;

* Sir C. Sargent, of the Bombay High Court, wrote:—
"The legal incidents of the undivided Hindu family, the minute distribution of property caused by the Muhammadan law of descent, and, though last not least, the practice of creating benami titles so common in this country, afford the dishonest debtor endless opportunities of baffling the efforts of the judgment-creditor to attach his property."

(*c*) that the abolition of imprisonment for debt would deprive lenders of personal security, would thereby depreciate credit, and would involve an increase in the rate of interest, already very high. In the case of agriculturists this might seriously impair their ability to pay the land-revenue;

(*d*) that abolition of imprisonment for debt should only be attempted when the habits of secrecy, engendered by centuries of oppression, have partly worn away, and when transactions are open and the registration of deeds and bonds has become habitual. When the debtor's property can be easily traced and seized in execution of a decree, then it will be reasonable and right to withhold execution on the body of a pauper debtor except as a distinctly exceptional and penal measure in the case of fraud.

23. In support of the abolition of imprisonment for debt were the following authorities :—

(*a*) the Advocate General of Bengal, who advocated the introduction of the English system, because there is no reason why the matter should not be regulated in India as in England, if proper exceptions and limitations, as contained in the English Debtors Act of 1869, are prescribed, and because the abolition of imprisonment for debt would not cause any public injury, while, on the other hand, the present system in most instances operates only as a means of oppression, to the total ruin of the party imprisoned and of his family;

(*b*) the Bengal Government, which, while not prepared to resist the opinions of the local officers that abolition would at present be premature, thought that, if an alteration of the bankruptcy law were at any time undertaken, measures might then be adopted for the abolition of imprisonment for debt in cases where fraud is not established against the judgment-debtor;

(*c*) the North-Western Provinces and Oudh Government, which regarded the existing practice of placing in the creditor's hands the power of selecting his own method of coercion as a relic of the old semi-barbarous debt laws which has now been eliminated from almost every civilized code of judicial procedure. The present system operates with severity against all debtors, honest and dishonest, indiscriminately. The power of subjecting a debtor to arrest and imprisonment should be entrusted *not* to the decree-holder, but to the Courts, and its exercise should be limited to cases where clear proof exists of fraudulent and contumacious attempts on the part of the judgment-debtor to defeat the operation of a decree. Imprisonment is especially hard on the cultivator and working-man, whom it deprives of their means of subsistence and of providing for their families;

(*d*) the North-Western Provinces High Court, which advocated the abolition of imprisonment for debt, as it is doubtful whether "any useful purpose is served by the perpetuation in this country of that remnant of barbarism";

(*e*) the Punjab Government, which believed that there is some reason to fear that, under the present system, creditors occasionally make use of the law to gratify vindictive feelings or personal spite, and to coerce debtors to sell their land and property at a price below its proper value or to relinquish their just rights. Discretionary power ought to be expressly allowed to the Civil Courts, imprisonment not being resorted to as an ordinary process of execution of a decree, unless the Court is satisfied that there has been fraud or wilful concealment of property;

(*f*) the Chief Commissioner of British Burma, who pointed out that the imprisonment of debtors who are paupers, but who are not fraudulent, does no real good to any class, works directly and indirectly great harm to the poorer classes, and causes a distinct loss to the community at large. The practice of permitting such imprisonment has been gradually circumscribed among other civilized nations; among some nations it has absolutely ceased; and there is no reason why the way should not be paved for the disappearance of the system in India. Civil Courts should be allowed to grant execution against the body of judgment-debtors against whom there might be *primâ facie* ground for presuming fraud or bad conduct, unless the presumption were rebutted by the judgment-debtor;

(*g*) the Judicial Commissioner of British Burma and the Recorder of Rangoon, who were of opinion that imprisonment for debt should be abolished, except in case of fraud, which should be punished criminally. The Recorder recommended that the law as it now obtains in England should be applied to India;

(*h*) the Resident at Hyderabad, who considered that the present system of imprisonment for debt is not wanted to compel payment, while it may be used to bring undue pressure to bear upon a debtor, especially in an agricultural country where interest in land is generally given as security for debts. He recommended that imprisonment for debt should be retained only to meet cases in which debtors abscond or endeavour to fraudulently evade meeting their obligations.

24. Thus, the preponderance of opinion was on the whole in favour of the maintenance of imprisonment for debt under the present condition of India, but a considerable and influential minority were in favour of its abolition.

25. The arguments on which the upholders of the present system rely fall into two classes: first arguments which, if valid at all, are valid for England as well as for India; and secondly, arguments based on the special circumstances and conditions of India.

26. To arguments of the first class belongs the assertion that "to remove from the Statute Book the penalty of arrest and imprisonment in execution of a decree for money would be to paralyze the commerce and trade of the country." The same objection was made in England, first to the abolition of arrest on mesne process, * and afterwards to the abolition of arrest on final process. The power of arrest was removed, and neither commerce nor trade showed any symptoms of paralysis.

* See Lord Cottenham's speech in 1844 on the Creditors and Debtors Bill; Hansard, 74, page 453.

27. Those who uphold imprisonment for debt, not as being generally expedient, but as being specially required for India, do so mainly on two grounds: first, the complexity and obscurity of Indian titles to property; and, secondly, the exceptional prevalence of fraud in India, and the exceptional difficulties of detecting it.

As to the first ground, it has been remarked that if it is wrong to allow a debtor to pledge his person as security for his debts, it is not the less wrong because, owing to the defect of Indian property law, he finds difficulty in giving a satisfactory security over his property.

In the argument based on the prevalence of, and difficulty of detecting fraud, there is undoubtedly much force, though it may be doubted whether the obstacles which can be placed in the way of a creditor realizing his debts are not as great in England as in India. But, however this may be, to make an honest, though needy, debtor liable to imprisonment, simply because fraudulent debtors are numerous and difficult to detect, appears to be as unjust as it would be to make homicide by misadventure punishable by death, simply because the crime of murder was rife and hard to prove.

28. There are in the opinion of the Government of India two principles which ought to be observed in every law of debtor and creditor. The Courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessaries of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the Courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all. Experience acquired in the Dekkhan goes to show that these principles are as applicable to India as to England. The Code of Civil Procedure recognises one of these principles by exempting from seizure for debt the debtor's bare means of subsistence. But this recognition is nullified by the refusal to adopt the principle of exempting the debtor's person from seizure. Of what use is it to reserve by law to the debtor the bare necessaries of life, when he can be compelled to give them up by the threat of imprisonment? By those who advocate the retention of the present system, much reliance is placed on the very small proportion of actual imprisonments to warrants of arrest; and the inference drawn from this proportion is that the law, though harsh in theory, produces no hardships in practice. But there is reason to believe that, in the great majority of cases, exemption from arrest is purchased either by renewal of bonds on extortionate terms, or by surrender of property which the law has exempted from seizure, or by surrender of property which does not belong to the debtor at all, but to his relations or friends. In other words, the law enables a creditor to do indirectly what it forbids him to do directly.

29. It is said that the honest debtor has an easy way out of prison through the door of insolvency. But in the first place, the honest debtor ought not to be sent to prison at all; and in the next place, the door which is provided for his release is, for some reason or other, very rarely used. There is, or was until recently, a strong concurrence of opinion to the effect that the Insolvency Chapter of the Code of Civil Procedure is practically a dead letter. As to the causes of its failure,—whether it is to be accounted for by the preliminary proceedings being unnecessarily cumbrous or expensive, or by the difficulty of satisfying the Court under section 351 that the debtor has not been guilty of any kind of misconduct, or by ignorance of the law and of the modes of relief available to debtors,—opinions differ; but about the fact of failure there appears to be no difference.

30. Since 1883 the Government of India has received and published reports obtained from Her Majesty's representatives abroad on the systems of imprisonment for debt in force in the various countries to which they are accredited. Those reports showed that imprisonment for debt has been abolished in nearly all civilized countries.

31. Having regard to the state of the law in the United Kingdom, to those reports, to the success which has attended the abolition of imprisonment for debt in the case of agriculturists to whom the Dekkhan Agriculturists' Relief Acts apply, to some expressions to be found in the opinions of the authorities who considered the draft Bankruptcy Bill of 1885, and to the advocacy by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, and by the Chief Justice and Judges of the High Court of Judicature for the North-Western Provinces, of the entire abolition of the process of arrest for debt, so far as it is a process that can be set in motion at the discretion of the creditor, and of the enforcement of the process being restricted to cases in which the Courts are satisfied that there have been fraudulent and contumacious attempts to defeat the operation of decrees, the Government of India has decided to introduce a Bill giving effect tentatively and, in the first instance, within a limited area to the policy which dictated the English Act of 1869, and is believed by several authorities of weight to be applicable to India.

Provisions of Bill.

32. *Sections 1 and 2.*—It is proposed that the measure shall apply in the first instance to the North-Western Provinces and Oudh, and be extendible to other Provinces, or to particular classes of debtors in other Provinces, by Local Governments with the previous sanction of the Governor General in Council.

From the opinions recorded by the Chief Commissioner and by Mr. MacEwen, the Officiating Recorder of Rangoon, on the draft Bankruptcy Bill of 1885, and by the Recorder, Judicial Commissioner and other authorities, European and Native, on the circular of 1881, there appears to be a strong feeling in Burma in favour of abolishing imprisonment for debt where the debtor has not been guilty of fraud. But it is considered desirable that the proposed Act should apply in the first instance to the territories under one Local Government, and that its effect there should be ascertained before the Act is extended to other parts of the country.

The date on which the Act is to come into force in the North-Western Provinces and Oudh is the 1st of January 1888. If therefore the Bill is passed during the present year, decree-holders will have more than twelve months within which they may proceed against their judgment-debtors under the provisions of the Code of Civil Procedure. In England the period which elapsed between the passing and the coming into force of the Debtors Act, 1869, was less than five months.

33. *Section 4.*—This section is based on section 4 of the Debtors Act, 1869, but applies only to arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts. Clause (*c*) is specially designed to check those fraudulent alienations of property by solvent but dishonest debtors which are relied on by the opponents of any mitigation of the existing law as the main justification of imprisonment for debt.

34. *Section 5.*—This section, following the 41 & 42 Vic., c. 54, permits the Court to refuse, either absolutely or on terms, an application for the arrest or imprisonment, or for the release or discharge from arrest or imprisonment, of a defaulter who is a trustee or person acting in a fiduciary capacity and is required, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself.

The origin and object of this clause are stated as follows by Jessel, M. R., in *Marris* v. *Ingram* (L. R. 13 Ch. D. 343):—

"Then we come to the Amendment Act of 1878, which was passed to meet a special class of cases, and the history of that Act was this: An application was made before me for the imprisonment of a trustee who had been ordered to pay a sum of money. It was a very hard case, one of an unintentional breach of trust; and though the man was actually dying, I had no alternative but to make an order. Then I had various other cases before me which led me to regret that the Court had no discretion, for it not unfrequently happened that a person who came in strictness under the first class of offences* was not guilty of any moral offence. Under these circumstances I thought it would be wise and prudent that a discretion should be given to the Courts to deal with exceptional cases, but not with the intention of repealing the existing Act. Mr. Marten, being a member of the Legislature, then adopted my suggestion, and procured this Amendment Act to be passed."

* That is to say, the defaults specified in 32 & 33 Vic., c. 62, s. 4.

35. *Section 6.*—This section empowers the High Court and the Chief Controlling Revenue-authority to make rules for regulating the procedure to be followed in the Courts subordinate to them respectively in inquiries as to the liability of persons to arrest and imprisonment on the ground of fraud or contumacy.

36. *Section 7.*—This section modifies the operation of enactments authorising arrest and imprisonment for default in compliance with decrees and orders of Civil and Revenue Courts for payment of money.

Clause (*a*), following the Code of Civil Procedure, limits the term of imprisonment to six months, notwithstanding that section 163 of the North-Western Provinces Rent Act, 1881, authorises imprisonment in certain cases for so long a period as two years.

Clause (*b*) relieves the decree-holder of the liability to maintain his judgment-debtor while in prison. If imprisonment is retained, not as a mode of enforcing payment but simply as a punishment, it will hardly be possible to continue the liability. This liability existed under the old Insolvency Law in England, and the Act which imposed it was once described as giving the creditor "the power of imprisoning and tormenting his debtor at the expense of 3*s.* 6*d.* per week."* If it is abolished, great care should be taken that imprisonment is not inflicted except in cases of misconduct which deserve punishment.

* Hansard, 74, page 451.

Clause (*c*) requires that the defaulter, though in the civil jail, shall nevertheless be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment. Where a person is ordered to pay a fine, the nature and term of his imprisonment will be regulated by the general law. This clause relates to the other cases in which a debtor is liable to imprisonment. Those cases, as before observed, all involve some degree of delinquency (L. R. 6 Ch. 157), and the imprisonment contemplated by the Bill, as by the English Act (L. R. 13 Ch. D. 343), is simple, that is, without hard labour. The effect of this clause will be to deprive the defaulter, as a civil prisoner, of the privilege of maintaining himself, and purchasing or receiving from private sources food, clothing, bedding, and other necessaries (Act XXVI of 1870, s. 34).

Clause (*d*) provides that, except where the arrest or imprisonment is for default in payment of a fine, the defaulter, when once arrested or imprisoned, shall not be released from arrest, or discharged from prison, without the order of the Court. The Court may grant the order or refuse it. If it refuses the order, the defaulter may appeal.

Clause (*e*) so far modifies clause (29) of section 588 of the Code of Civil Procedure as to admit of an appeal being preferred from an order for imprisonment in execution of a decree.

37. *Section 8.*—This section follows section 359 of the Code of Civil Procedure in providing that where the Court is of opinion that the defaulter has been guilty of an offence against the Indian Penal Code or any special enactment for the punishment of fraudulent debtors, it may, instead of ordering his imprisonment in the civil jail, send him to a Magistrate to be dealt with according to law.

38. *Sections 9 and 10.*—These sections contain special provisions with respect to arrest before judgment, and save proceedings taken before the Act comes into force.

39. *Section 11.*—It has been decided *In re Heavens Smith* (L. R. 2 Ex. D. 47) that the English Debtors Act of 1869 does not apply to a case in which the defaulter is a debtor to the Crown. It is proposed that the Indian Act shall have the like effect as against the Crown where a decree or order for payment of money is made in its favour by a Civil or Revenue Court, as it will have against a subject.

40. The question of giving the Courts a discretionary power to refuse an order for the arrest and imprisonment of a judgment-debtor, or at least of a female judgment-debtor, will be considered when next the Code of Civil Procedure comes under revision.

(Signed) C. P. ILBERT.

The 9th June 1886.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.

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