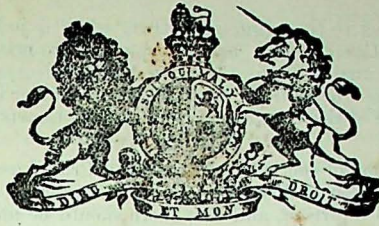


THE



# Bombay Government Gazette.

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*Separate paging is given to this Part, in order that it may be filed as a separate compilation.*

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Law relating to Imprisonment for debt was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 24th February 1888:—

WE, the undersigned, members of the Select Committee to which the Bill to amend the law

relating to Imprisonment for Debt was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report with copy of the Bill as amended by us annexed thereto.

From Mr. P. R. Desai, Pleader, District Court, Satara, dated 15th July 1886 [Paper No. 1].  
From Secretary to Chief Commissioner, Coorg, No. 1495—273, dated 16th August 1886 [Paper No. 2].  
From Secretary for Berar to Resident, Hyderabad, No. 331G., dated 15th September 1886, and enclosures [Papers No. 3].  
From Chief Secretary to Government, Madras, No. 2405, dated 4th September 1886, and enclosures [Papers No. 4].  
From Chief Commissioner, Ajmere-Merwara, No. 1104—690-II, dated 22nd September 1886 and enclosures [Papers No. 5].  
Endorsement by Chief Secretary to Government, Madras, No. 2523, dated 22nd September 1886, and enclosures [Papers No. 6].  
From Secretary to Chief Commissioner, Assam, No. 1727, dated 21st August 1886, and enclosures [Paper No. 7].  
From Acting Under Secretary to Government, Bombay, No. 5776, dated 8th October 1886, and enclosures [Papers No. 8].  
From Secretary to Chief Commissioner, Burma, No. 377—20L., dated 15th October 1886, and enclosures [Papers No. 9].  
From Under Secretary to Chief Commissioner, Central Provinces No. 4991—298, dated 2nd November 1886, and enclosures [Papers No. 10].  
From Secretary to Chief Commissioner, Coorg, No. 1970—2736, dated 2nd November 1886, and enclosures [Paper No. 11].  
From Under Secretary to Government, Bombay, No. 8064, dated 16th November 1886 [Paper No. 12].  
From Chief Secretary to Government, Madras, No. 3003, dated 11th November 1886, and enclosures [Papers No. 13].  
From Officiating Junior Secretary to Chief Commissioner, Central Provinces, No. 9828., dated 23rd November 1886, and enclosures [Papers No. 14].  
From Chief Secretary to Government, Bengal, No. 3321J., dated 19th November 1886, and enclosures [Papers No. 15].  
From Officiating Chief Secretary to Government, Bengal, No. 3753J., dated 13th December 1886, and enclosures [Papers No. 16].  
From Officiating Chief Secretary to Government, Bengal, No. 3857J., dated 17th December 1886, and enclosure [Papers No. 17].  
From Secretary, Mymensingh Landholders' Association [Paper No. 18].  
Translation of Memorial from Jawla Pershad, Moneylender and Zamindar and Inhabitant of Bandki and Hazratpur, Pargana Bandki, Zila Fatehpur, dated 25th October 1886 [Paper No. 19].  
From Secretary to Government, Punjab, No. 42, dated 13th January 1887, and enclosures [Papers No. 20].  
From Secretary, Bengal Chamber of Commerce, No. 91, dated the 31st January, 1888 [Paper No. 21].

2. Section 2 of the revised Bill on which sections 3, 5, 6 and 9 wholly and sections 4 and 7 partly depend, would give effect to the very general opinion that it should be in the discretion of a Court executing a decree to refuse to issue a warrant of arrest at the pleasure of a decreeholder, and that the law with respect to the arrest

and imprisonment of women in execution of decrees should be what in section 8 of the Married Women's Property Act, 1874, it is assumed to be.

3. Section 4 would give effect to the suggestion that, when a judgment-debtor who has been arrested is brought before the Court before being committed to prison, the Court should have the power to order his release if he is unable to pay the amount of the decree and the Court sees no reason to suppose that he has obstructed or will obstruct the decreeholder in the execution of the decree. The section is based on section 30 of the Presidency Small Cause Courts Act, 1882, and section 4 of the Debtors Bill, 1886.

4. Section 8 is an amplification of section 15 of the Civil Procedure Code Amendment Bill, 1886. It has been urged that, where a person in ill-health has been arrested, it should be in the discretion of the Court to refuse to commit him to prison, and that there should be no room for doubt that, where a person has been released from arrest or imprisonment on the ground of illness, he is liable to be re-arrested.

5. It is proposed to leave untouched the law respecting arrest before judgment. The use of that process is discretionary with the Courts, which can only use it where they are satisfied that there is an intention on the part of a defendant to evade their jurisdiction.

6. In two local Rent Acts reproducing the provisions of section 278 of the Code of 1859 with respect to the period of imprisonment in execution of decrees, section 10 of the revised Bill substitutes for those provisions the provisions of section 342 of the Code of 1882.

7. The publication ordered by the Council has been made as follows:—

| <i>Gazette.</i>   | <i>In English.</i> | <i>Date.</i>                           |
|---|--------------------|--|
| Gazette of India...                                     | ...                | 12th, 19th and 26th June, 1886.        |
| Fort Saint George Gazette ...                           | ...                | 16th July 1886.                        |
| Bombay Government Gazette ...                           | ...                | 17th and 24th June, and 1st July 1886. |
| Calcutta Gazette ...                                    | ...                | 23rd and 30th June, and 7th July 1886. |
| North-Western Provinces and Oudh Government Gazette ... | ...                | 16th and 23rd June 1886.               |
| Punjab Government Gazette ...                           | ...                | 17th and 24th June, and 1st July 1886. |
| Central Provinces Gazette ...                           | ...                | 26th June, and 3rd and 10th July 1886. |
| Burma Gazette ...                                       | ...                | 3rd, 10th and 17th July 1886.          |
| Coorg District Gazette ...                              | ...                | 1st August 1886.                       |

| <i>Province.</i>  | <i>In the Vernaculars.</i> | <i>Language.</i> | <i>Date.</i>                                   |
|-------------------|----------------------------|------------------|--|
| Madras            | ...                        | Tamil ...        | 17th September 1886.                           |
|                   |                            | Telugu ...       | 1st October 1886.                              |
|                   |                            | Hindustáni ...   | 2nd November 1886.                             |
|                   |                            | Kánarese ...     | 15th October 1886.                             |
| Bombay            | ...                        | Malayalam ...    | 8th October 1886.                              |
|                   |                            | Maráthi ...      | 9th September 1886.                            |
|                   |                            | Gujaráthi ...    | 9th September 1886.                            |
|                   |                            | Kánarese ...     | 16th September 1886.                           |
| Bengal            | ...                        | Bengali ...      | 31st August and 7th September, 1886.           |
|                   |                            | Hindi ...        | 31st August and 7th and 14th September 1886.   |
|                   |                            | Uriya ...        | 9th September 1886.                            |
|                   |                            | Urdu ...         | 6th, 13th and 20th November 1886.              |
| Punjab            | ...                        | Urdu ...         | 11th, 18th and 25th November 1886.             |
| Central Provinces | ...                        | Maráthi ...      | 29th September, and 5th and 12th October 1886. |

8. We consider that the Bill as amended by us should be re-published before it is further considered in Council.

(Signed) ANDREW R. SCOBLE.  
 ( " ) C. U. AITCHISON.  
 ( " ) RANA SHANKAR BAKSH SINGH.  
 ( " ) SYUD AMER HOSSEIN.  
 ( " ) PEARI MOHAN MUKERJI.\*  
 ( " ) J. W. QUINTON.  
 ( " ) ROBERT STEEL.  
 ( " ) DINSHAW MANOCKJEE PETIT.  
 ( " ) F. M. HALLIDAY.

The 24th February 1888.

\* I think the Bill is one-sided in one particular. It leaves untouched the procedure for the recovery of revenue and rent in certain provinces and administrations, but materially modifies it in others.

PEARI MOHAN MUKERJI.

No. II.

*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:—

Title, commencement and extent. 1. (1) This Act may be called the Debtors Act, 1888; and

(2) It shall come into force at once.

(3) The several portions thereof have the same local extent as the enactments to which they respectively relate.

XIV. of 1882. 2. After section 245 of the Code of Civil Procedure the following sections shall be inserted, namely:—

“245A. Notwithstanding anything in the last foregoing section or in any other section of this Code, the Court shall not order the arrest or imprisonment of a woman in execution of a decree for money.

“245B. (1) Notwithstanding anything in section 245 or in any other section of this Code, when an application is for the execution of a decree for money by the arrest and imprisonment of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to jail in execution of the decree.

“(2) If appearance is not made in obedience to the notice, the Court shall, if the decreeholder so requires, issue a warrant for the arrest of the judgment-debtor.”

3. In section 250 of the said Code, between the word “shall” and the word “issue” the following shall be inserted, namely:—

“subject to the provisions of section 245A and 245B,”

Addition of new section after section 337 of the Code. 4. After section 337 of the said Code the following shall be inserted, namely:—

“337A. (1) When a judgment-debtor appears before the Court in obedience to a notice issued under section 245B, or is brought before the Court after being arrested in execution of a decree for money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms, if any, as it thinks fit, make an order disallowing the application for his

arrest and imprisonment, or directing his release, as the case may be.

“(2) Before making an order under sub-section (1), the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely:—

(a) the decree being for a sum for which the judgment-debtor was bound as a trustee or as acting in any other fiduciary capacity to account;

(b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree;

(c) any undue or unreasonable preference given by the judgment-debtor to any of his other creditors;

(d) his refusal or neglect to pay the amount of the decree or some part thereof when he has or since the date of the decree has had the means of paying it;

(e) the likelihood of his absconding or leaving the jurisdiction of the Court with the object or effect mentioned in clause (b) of this sub-section.

“(3) While any of the matters mentioned in sub-section (2) are being considered, the Court may in its discretion order the judgment-debtor to be imprisoned, or leave him in the custody of an officer of the Court, or release him on his furnishing sufficient security for his appearance on the requisition of the Court:

“(4) A judgment-debtor released under this section may be re-arrested.

“(5) If the Court does not make such an order as is mentioned in sub-section (1), it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to jail.”

Addition to section 380 of the Code. 5. To section 380 of the said Code the following shall be added, namely:—

“On the application of any defendant in a suit for money in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India independent of the property in suit.”

Amendment of section 640 of the Code. 6. In section 640 of the said Code, after the words “from arrest in execution of civil process” the words “in any case in which the arrest of women is not prohibited by this Code” shall be added.

Amendment of section 642 of the Code. 7. In section 642 of the said Code, for the words and figures “except as provided in sections 256 and 643” the following shall be substituted, namely:—

[Act XV, 1882, s. 30.]

[Debtors Bill, 1886, s. 4.]

[Act XIV, 1882, s. 349.]

[Cf. Act XIV, 1882, s. 341.]

"except as provided in section 337A, sub-section (5), and sections 256 and 643."

Addition of new section after section 652 of the Code.

"653. (1) At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

"(2) When a judgment-debtor has been arrested under this Code the Court may release him if in its opinion he is not in a fit state of health to undergo imprisonment.

"(3) When a judgment-debtor has been committed to jail, he may be released therefrom—

(a) by the Local Government, on the ground of his suffering from any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

[Cf. Act XIV, 1882, s. 341.]

"(4) A judgment-debtor released under this section may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed that prescribed in section 342 or section 481, as the case may be."

9. The last sixteen words of section 8 of the Married Women's Property Act, 1874, and the whole of section 31 of the Ajmere Courts Regulation, 1877, are hereby repealed.

10. (1) For the first fifty-five words of section 48 of the Act of the Governor of Fort St. George in Council, No. VIII of 1865, the following shall be substituted, namely:—

"No person shall be imprisoned as a defaulter for a longer period than six months whatever the amount of the arrears may be, nor for a longer period than six weeks if the arrears do not exceed fifty rupees."

(2) For the proviso to section 163 of the North-Western Provinces Rent Act, 1881, the following shall be substituted, namely:—

"Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed six weeks when the amount decreed (exclusive of costs) does not exceed fifty rupees, or six months in any other case."

S. HARVEY JAMES,

Secretary to the Government of India.