

1925

Noted

KENYA

47811

REC
RE 23 OCT 25

FROM
A. G. DENHAM.

1237

DATE

30th September 1925.

FOR CIRCULATION:—

Mr. *Sturte*
Mr. *Bohler 13 x 1*
Mr. *Staff 14*

752

BANKRUPTCY ORDINANCE, 1925.

Trs two copies of Bill. A reprint, correct-
ing a printing error, will follow by next mail.
Hopes H.M. may be advised to assent, in which
case requests communication by tel.

Ast. U.S. of S.

Mr. Staff

Perm' U.S. of S.

Parb U.S. of S.

Secretary of State.

Previous Paper

80. 3391/25

13 JAN 1926

19 JAN 1926 ap ✓
Def 3/54190/25

Basic dep 30 May 25
MINUTES *Noted*

See also 48990: + memo within

When this dep was sent the Sec was not
in receipt of the Dep's dep on 33911
reserving the matter for a Conference.
It is difficult to believe there is any
urgent hurry to get this Ordinance into
operation ~~and~~ that the matter has
already dragged on quite a long time,
without any suggestion of urgency.
Also this Ordinance will I presume have
to go to the Dep of Public Accounts
and may be expected to occupy a
considerable time in normal circumstances.
As regards the Conference the
present *Act* of Kenya has left

(Taken from Jm 48990)
was a Tel to Secy. 26/3/25 4890 during
order to be copy sent copy 13 JAN 1926
on Dep 3/54190/25
copy x to be signed
copy x to be signed
copy x to be signed

Subsequent Paper

48990

It seems to me that to allow the Ord^{ce}
to take effect would not necessarily prejudice
the question of ultimate uniformity. At
all events, not nearly so much as to
turn down an Ord^{ce} which expresses
the local views of Kenya and so to
provoke confusion. T53

If the Ord^{ce} is not in itself open to
serious criticism I should be inclined
to let it pass first & take up the
uniformity point later

W.S. Strickland

13. XI. 25

The Ord^{ce} follows the lines of the Imperial
Bankruptcy Act very closely & I have no criticism
to make in regard to it. It might in my opinion
be well made the standard ^{with} to which the Keffy
legislation of the other E. A. dependencies ^{conform} shall ^{be} subject
to local variations required by local circumstances.

To B. of T. as proposed

S. 16 (1. 25) ^{142/11.}
at once

The question of bankruptcy legislation in East Africa was raised by Sir H. Leggett at the end of 1921 (63932/21) and the matter was referred to the various Governments. In May 1924 (22102/24) the Department of Overseas Trade forwarded a copy of a letter from the Trade Commissioner pressing for a revision of bankruptcy legislation and for it to be uniform throughout the East African Dependencies. In the despatch dated the 3rd of July, 1924, (30430/24) the Governor of Kenya was asked to arrange for a conference on the subject to include all the East African Dependencies with the exception of Somaliland. Later the East Africa Commission (33911/25) recommended that a conference should be held as soon as possible with a view to the adoption of a uniform bankruptcy law; (the Commission also made ~~a~~ suggestions with regard to the treatment of the assets of a bankrupt and the appointment of officers, but these ~~are~~ ^{merely} followed by suggestions already put forward in the correspondence with the Governor referred to above).

It now appears that steps have been taken by the Government of Kenya to arrange a conference and that Zanzibar has intimated its willingness to send a representative. Tanganyika and Uganda have not replied and beyond the conference between the Attorneys-General of Kenya and Uganda, nothing towards the attainment of a conference has been done. (Nyasaland has apparently not been communicated with.)

The present position is as follows:

- (a) KENYA. The existing Kenya Law is based on the Indian Provincial Insolvency Acts and they now produce a

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Bill (which has been reserved for the signification of His Majesty's pleasure) based on English Law; the Kenya Law Society represented to the East Africa Commission that whilst uniformity was desirable, any departure from the broad principles of English Law would be strenuously opposed by them.

(b) UGANDA. In Uganda English Law has hitherto been followed "so far as circumstances admit". In March, 1922, the Acting Governor reported (17651/22) that he was advised that existing legislation, if properly administered, affords ample protection against fraudulent bankruptcies. At the recent conference between the Attorneys-General of Kenya and Uganda, the latter said that in his opinion, the Ordinance (presumably this Kenya reserved Bill) met the views of Uganda.

(c) TANGANYIKA TERRITORY. In June, 1925, the Governor reported (30367/25) that English practice relating to bankruptcy which had been applied in Tanganyika by Ordinance 8 of 1920 had been found unsatisfactory in certain particulars and that new Legislation was in course of preparation. It appears from the East Africa Commission's Report that the new draft Ordinance is based on the Indian Presidency-Towns Insolvency Act, 1909. The draft has not yet been received here and Tanganyika has made no reply to the communications from Kenya with regard to the proposed conference, although twice written to on the subject.

(d) ZANZIBAR. The existing Decree is based on the Indian Presidency-Towns Insolvency Act, 1909. In March, 1922, (17652/22) the British Resident reported that he was advised that the existing Decree was well suited to the requirements

requirements of the Protectorate and that his advisors were then unable to make any recommendations or suggestions for improving the system. Zanzibar has informed Kenya that it is willing to send a representative to the suggested conference.

(e) NYASALAND. Nyasaland has hitherto been rather out of the picture, but in April, 1925, (22851/25) the Governor reported that in the absence of local Legislation the Imperial Bankruptcy Acts, 1883 to 1890 apply in Nyasaland, and that the machinery of the Acts is not susceptible of application in its entirety to local conditions, e.g., the amount of bankruptcy work involved would not justify the appointment of separate Official Receivers who deal with estates in the United Kingdom. The Governor added that he understood that Legislation was contemplated in Kenya and that the question of the assimilation of the Bankruptcy Law of the East African Group may also be under consideration; and that, in that case, he did not propose to introduce any legislation in Nyasaland until he received the views of the Secretary of State although it was desirable that bankruptcy laws should be introduced more suited to the local conditions.

It therefore appears that instead of securing uniformity in all the five Dependencies, matters are shaping towards Legislation in Kenya, Uganda and Nyasaland based on English Law and in Tanganyika and Zanzibar on the Indian Presidency-Towns Insolvency Act, 1909; that is, of course, if Tanganyika is to be allowed to change from her present system which is based on English Law.

W. Allen
2/11/25

47911
REC
REL 25-9-25



AS.

KENYA.

GOVERNMENT HOUSE,
NAIROBI,

No. 1237.

September 30th, 1925.

Sir,

With reference to your Circular Despatch of the 30th May, I have the honour to transmit two copies of a Bill intituled an Ordinance to Consolidate and Amend the Law Relating to Bankruptcy, which passed the third reading in Legislative Council on the 24th August, 1925, together with a Statement of Objects and Reasons and a Comparative Table prepared by the Attorney General.

Bill.

Statement of
Objects and
Reasons.
Comparative
Table.

2. It is regretted that during the final printing of the Bill an error has been inserted in Section 139. In order to avoid delay this error has been corrected in ink by the Clerk. A re-print will be sent by the next mail.

3. The history of the Bill is set out at some length in the Statement of Objects and Reasons and I therefore refrain from commenting thereon at greater length. You will observe that it has not been possible to arrange for the Conference suggested by Mr. Thomas in his Confidential Despatch of the 3rd July, 1924, and by the East African Parliamentary Commission.

M.O.
30430/14

Vide p.65 of East
African Com-
mission's
Report.

4. For this reason, and also in view of the fact that the East African Parliamentary Commission conducted enquiries into the Bankruptcy Law of this and the other East African

-Dependencies-

THE RIGHT HONOURABLE
LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

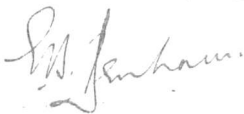
Dependencies, I have considered it desirable to reserve the Bill for the signification of His Majesty's pleasure.

5. I trust, however, that you will have no hesitation in advising His Majesty to assent to the Bill and, inasmuch as there is a very urgent desire on the part of the legal and commercial communities that the Bill may be put into force as soon as possible, I shall be glad if this assent may be communicated to me by telegram.

I have the honour to be,

Sir,

Your most obedient, humble servant,



ACTING GOVERNOR.

THE BANKRUPTCY ORDINANCE, 1925.

1. The object of this Ordinance is to consolidate and amend the law relating to Bankruptcy.

In practice the Indian Provincial Insolvency Act has proved to be deficient. The commercial community and the Law Societies have agreed that it has not provided adequate protection from fraudulent practices. Procedure under it has been slow and cumbrous. The bankruptcy offences have not been sufficiently extensive and it has not afforded sufficient control over the property and person of debtors. It is hoped that the present Ordinance has remedied these defects. The Ordinance follows almost exactly the Imperial Bankruptcy Act, 1914. This confers the additional advantage that the Courts will be able to take into consideration the effect of English decisions under the corresponding English Act.

It was reported to the Secretary of State on the 21st February, 1923, that a new Bankruptcy Law was being drafted which would follow English law.

This Ordinance has been considered in detail by the commercial community, Chambers of Commerce and the Law Societies and His Majesty's Trade Commissioner and has met with their approval. It has also been reviewed by the Chief Justice and certain minor amendments which he recommended have been effected.

The Parliamentary Commission inquired into the bankruptcy law of Kenya, Uganda and Tanganyika. The Kenya Law

Law Society represented to the Commission that, whilst it was desirable that the bankruptcy legislation of all the East African dependencies should as far as possible be uniform, any departure from the broad principles of English law should be strenuously opposed by them. During the past three years attempts have been made to obtain the views of the Governments of the other territories on this matter.

In a recent interview with the Attorney General of Uganda he informed me that in his opinion the Ordinance met the views of Uganda.

Tanganyika has twice been written to on this matter and copies of the present enactment when in draft and also an earlier draft were sent for review but no reply has been received. It is understood however, that the bare application of the English Act which was made by Tanganyika Ordinance, No. 9 of 1920, has in practice been found difficult to work and that steps are being taken to enact an Ordinance on the lines of the Indian Presidency Towns Act, 1909.

A reply has been received from the Government of Zanzibar enclosing an opinion by the Chief Justice that their present law which is based on the Indian Presidency Towns Act is more suitable to local conditions than the provisions of the Kenya Bill.

The Chief Justice of Zanzibar also expressed the opinion that absolute uniformity in procedure was not essential provided that the Acts constituting Bankruptcy were similar in the different territories and that arrangements were made for reciprocal enforcement of decrees and orders. With this view I agree and these requirements have been kept in mind in drafting this Ordinance.

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The Secretary of State in his confidential 761

despatch of the 3rd July, 1924, desired that a conference between the East African dependencies except Somaliland should be arranged to go into the question of bankruptcy law in detail. Steps have been taken by this Government to arrange for such a conference. Zanzibar has intimated its willingness to send a representative. Tanganyika and Uganda have not replied and beyond the conference between the Attorneys General of Kenya and Uganda nothing further towards the attainment of this end has been done.

It was felt that in view of the demand of the local commercial and legal bodies the enactment of this Ordinance could no longer be delayed, but this will not prejudice any future conference for the purpose of considering the most effective steps to be taken to secure reciprocity and as far as possible uniformity.

In the Ordinance the functions of the Board of Trade in England are on the whole carried out by the Official Receiver but in certain cases have been given to the Court. The Court has all the powers which are enjoyed by the Court in England. The other duties of the Official Receiver are similar to those under the English Act. Administration is in the hands of a trustee appointed by the creditors or in certain events by the Court. The trustee is distinct from and subject to the supervision of the Official Receiver. Section 91 however dealing with the vacation of office by a trustee which in England is under the control of the Board of Trade has placed this matter under the control of the Court as it was felt that this was more within the province of the Court especially as the Official Receiver may in certain cases be appointed trustee.

Attention.

Attention is directed to the provisions of Section 35 which deal with priority of debts. Under the Indian Provincial Insolvency Act the Crown has absolute priority for all debts. In this Ordinance priority has been restricted to taxes and for one year's assessment only. This has been done as being more in accordance with modern feeling and the provisions of the Bankruptcy Act, 1914.

Crown rents are however in a somewhat different position from other debts. The Crown in this Colony is a very extensive land owner. Expediency frequently demands that in times of hardship the Crown shall act as a benevolent landlord and allow rent to remain unpaid until improved harvests enable a struggling settler to meet his liabilities. In the circumstances it was felt that Crown rents should be given five years' priority. This, it is considered, is sufficient to avoid having to deal harshly with tenants and at the same time ensures that Crown rents shall not be lost to the revenue.

Section 73 provides that the Official Receiver shall act in regard to the prosecution of fraudulent debtors under the orders of the Attorney General. This is inserted in view of Section 145 which places prosecutions under the control of the Attorney General.

It is hoped that Section 112 which deals with the reciprocal enforcement of orders, warrants and search warrants of other Courts subject to the Court of Appeal for Eastern Africa will prove of great assistance even if uniformity in the bankruptcy laws of all the territories is not attained. This provision is supplemental to and goes further than the acting in aid which all Courts can render to each other under Section 122 of the Bankruptcy Act, 1914.

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Under Section 118 rule making power has been delegated to the Rules Committee established under the Civil Procedure Ordinance. It is felt that this will enable the Bankruptcy Rules to be correlated with the ordinary Rules of Civil Procedure. On the other hand the fixing of fees under Section 119 has been left to the Chief Justice.

Section 134 which deals with Bankruptcy offences is much more extensive and definite than the provisions of the Indian Provincial Insolvency Act. Sub-section (17) creates an additional bankruptcy offence, providing for the case of a bankrupt making default in payment of any portions of salary in respect of which an order may be made. This is taken from the Debtors Act, 1869.

In the repeal Section 147, provisions have been made for the repealed Ordinance to govern any bankruptcies which may have been commenced under its provisions in order to avoid any danger of placing an individual under the incidence of penalties to which he was not liable when adjudicated.

2. A Comparative Table is attached.
3. In my opinion, His Excellency the Governor, may properly assent to this Ordinance in the name and on behalf of His Majesty.

Nairobi,
31st September, 1935.

C. W. Hull
ATTORNEY-GENERAL.

COMPARATIVE TABLE OF SECTIONS
THE BANKRUPTCY ORDINANCE, 1928.

(N.B. The sections mentioned in the 3rd column are the corresponding sections of the Imperial Bankruptcy Act, 1914, except those sections which are expressly stated otherwise.)

Section	Remarks	Imperial Act
1.	Short title.	169
2.	Interpretation.	167.
3.	Acts of bankruptcy.	1.
4.	Bankruptcy notices.	2.
5.	Jurisdiction to make receiving order.	5.
6.	Conditions on which creditor may petition.	4.
7.	Proceedings and order on creditor's petition.	5.
8.	Debtor's petition and order thereon.	6.
9.	Effect of receiving order.	7.
10.	Power to appoint interim receiver.	8.
11.	Power to stay pending proceedings.	9.
12.	Power to appoint special manager.	10.
13.	Advertisement of receiving order.	11.
14.	Power to rescind receiving order in certain cases.	12.
15.	First and other meetings of creditors.	13.
16.	Debtor's statement of affairs.	14.
17.	Public examination of debtor.	15.

Section	Remarks	Imperial
18.	Compositions and schemes of arrangement.	16.
19.	Effect of composition or scheme.	17.
20.	Adjudication of bankruptcy where composition not accepted or approved.	18.
21.	Appointment of trustee.	19.
22.	Committee of inspection.	20.
23.	Power to accept composition or scheme after bankruptcy adjudication.	21.
24.	Duties of debtor as to discovery and realisation of property.	22.
25.	Arrest of debtor under certain circumstances.	23.
26.	Re-direction of debtor's letters.	24.
27.	Inquiry as to debtor's conduct, dealings and property.	25.
28.	Discharge of bankrupt.	26.
29.	Fraudulent settlements.	27.
30.	Effect of order of discharge.	28.
31.	Power for court to annul adjudication in certain cases.	29.
32.	Description of debts provable in bankruptcy.	30.
33.	Mutual credit and set-off.	31.
34.	Rules as to proof of debts.	32.

Section	Remarks	Imperial Act
35.	Priority of debts. Sub-clause (1) (b) is new. For explanation please see Legal Report.	33.
36.	Preferential claim in case of apprenticeship.	36.
37.	Landlord's power of distress in case of bankruptcy.	35 (1)
38.	Postponement of husband's and wife's claims.	36.
39.	Relation back of trustee's title.	37.
40.	Description of bankrupt's property divisible amongst creditors.	38.
41.	Provisions as to second bankruptcy.	39.
42.	Restriction of rights of creditor under execution or attachment.	40.
43.	Duties of sheriff as to goods taken in execution.	Section 15 of Imperial Bankruptcy Act 1913.
44.	Avoidance of certain settlements.	42.
45.	Avoidance of general assignments of book debts unless registered.	43.
46.	Avoidance of preference in certain cases.	44.
47.	Protection of bona fide transactions without notice.	45.
48.	Validity of certain payments to bankrupt and assignee.	46.
49.	Dealings with undischarged bankrupt.	47.
50.	Possession of property by trustee.	48.

Section	Remarks	Imperial Act.
51.	Seizure of property of bankrupt.	49.
52.	Appropriation of portion of pay or salary to creditors.	51.
53.	Appropriation of income of property restrained from anticipation.	52.
54.	Vesting and transfer of property.	53.
55.	Disclaimer of onerous property.	54.
56.	Powers of trustee to deal with property.	55.
57.	Powers exercisable by trustee with permission of committee of inspection.	56.
58.	Power to allow bankrupt to manage property.	57.
59.	Allowance to bankrupt for maintenance or service.	58.
60.	Right of trustee to inspect goods pawned, etc.	59.
61.	Limitation of trustee's powers in relation to copyright.	60.
62.	Protection of official receivers and trustees from personal liability in certain cases.	61.
63.	Declaration and distribution of dividends.	62.
64.	Joint and separate dividends.	63.
65.	Provisions for creditors residing at a distance, etc.	64.
66.	Right of creditor who has not proved debt before declaration of dividend.	65.
67.	Interest on debts.	66.
68.	Final dividend.	67.

Section	Remarks	Imperial Act.
106.	Power to present petition against one partner.	114.
107.	Power to dismiss petition against some respondents only.	115.
108.	Property of partners to be vested in same trustee.	116.
109.	Actions by trustee and bankrupt's partners.	117.
110.	Actions on joint contracts.	118.
111.	Proceedings in partnership name.	119.
112.	Reciprocal enforcement of orders, warrants and search warrants of courts subordinate to the Court of Appeal for Eastern Africa. Please see the Legal Report.	New.
113.	Commitment to prison.	124.
114.	Married women.	125.
115.	Exclusion of companies.	126.
116.	Application of Ordinance in case of small estates.	129.
117.	Administration in bankruptcy of estate of person dying insolvent. Clause (4) modified.	130.
118.	Power to make general rules. Rule making power has been delegated to the Rules Committee established under the Civil Procedure Ordinance, 1924. See Legal Report.	132.
119.	Fees, etc.	133.
120.	Salaries and remuneration.	134.
121.	Gazette to be evidence.	137.
122.	Evidence of proceedings at meetings of creditors.	138.

Section	Remarks	Imperial Act
123.	Evidence of proceedings in bankruptcy.	139.
124.	Swearing of affidavits.	140.
125.	Death of debtor or witness.	141.
126.	Certificate of appointment of trustee.	143.
127.	Computation of time.	145.
128.	Service of notices.	146.
129.	Formal defect not to invalidate proceedings.	147.
130.	Exemption of deeds, etc., from stamp duty.	148.
131.	Acting of corporations, partners, etc.	149.
132.	Certain provisions to bind Crown.	151.
133.	Unclaimed and undistributed dividends or funds under this Ordinance.	153.
134.	Fraudulent debtors. Subsection (17) Of Debtor's Act 1869 Section 4 (b).	154.
135.	Undischarged bankrupt obtaining credit.	155.
136.	Frauds by bankrupts, etc.	156.
137.	Bankrupt guilty of gambling, etc.	157.
138.	Bankrupt failing to keep proper accounts.	158.
139.	Bankrupt absconding with property.	159.
140.	False claim, etc.	160.
141.	Order by court for prosecution on report of trustee.	161.
142.	Criminal liability after discharge on composition.	162.

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*Ans'd
54890*

C. D.
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21
ing Street

21 November, 1925.

DRAFT.

THE SECRETARY,
BOARD OF TRADE.

MINUTE.

Sir,

With reference to your letter of the 16th June, 1924, I am etc., to transmit to you to be laid before the Board. I enclose a copy of a despatch from the Officer Administering the Government of Kenya submitting an Ordinance passed by the Legislature of Kenya to consolidate and amend the law relating to Bankruptcy. I am to explain that in July 1924 the Governor of Kenya was instructed to communicate with the Governors of the other East African Dependencies with a view to arranging a Conference on the subject of Bankruptcy law in order to secure, if possible, uniform legislation in the various Dependencies. It will be observed, however, that it has not yet been possible to

13 JAN 1926 Ref 54890/25

19 JAN 1926

- Mr. Cliffe 16.XI.25.
- Mr. *W. Mc...* 17/11
- Mr. *Boothamley* 18/11
- ~~Mr. Shackleton~~
- Mr. C. Davis
- Sir G. Grindle
- Mr. S. Wilson
- Mr. Ormsby Gore
- Mr. Amery
- Mr. Thomas

In case of any delay to Gov. by the Hon. Secy to Gov. by the Hon. Secy to Gov. by the Hon. Secy to Gov.

No. 1237: 30 Sept. 1925.

a. B. Office has to a corrected copy in 4890

arrange

arrange such a Conference; but Mr. Amery does not consider that the question of uniformity need necessarily be prejudiced if the enclosed Ordinance is allowed to come into operation since he is advised that it follows closely the line^s of the Imperial Bankruptcy Act and might, if the Board of Trade have no serious criticisms to offer, serve as a standard to which similar legislation in the other Departments should conform subject to local variations required by local circumstances.

3. Mr. Amery would therefore be greatly obliged if the Board of Trade could find it convenient to favour him with their observations on the enclosed Ordinance at the earliest convenient date, in order that they may be available for the guidance of the local Governments.

I am, etc.

(Signed) W. BOTTOMLEY.