

1921

E. AFRICA
ZANZIBAR

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Ref
Rec: 9 21

Sw
ESTIMATOR F.H.L.
L 296

DATE
EIGHTH DECEMBER 1921

CIRCULATION
Grindle
H. Lambert
H. Read
Masterton Smith
Ward
Churchill

SUBJECT

BANKRUPTCY LEGISLATION

Encloses extract from a letter re unsatisfactory position and thinks some enquiry should be made as to law and its administration.

Previous Paper

MINUTES

Mr. Elphinst.
Will you please advise?

Mr. Masterton *C.O. 3042.21*

Copy with enclosure properly issued 1/12/21 to Secy of the Conf. Com. of Jan 27
Copy sent above to Gen. Kenyatta } Conf. Com. of Jan 27
Copy } Gen. Kenyatta
copy } Gen. Lyanda

The Zanzibar Insolvency Decree was passed in 1914 and seems to me to be in all respects an adequate measure. It is based on the Indian Insolvency Act of 1907 and the draftsman has also consulted and in many instances followed the provisions of the Imperial statute of 1914.

I do not see, though I have carefully considered this letter and its enclosure, in what detail the law could be "stiffened up" without departing from our English precedents and setting up a more rigid and Draconian System than experience has shown us to be advisable.

Taking the points referred to in order -
The 1st point raised by Sir E. Leggett is that
the

Subsequent Paper
628
1921
Uganda

the insolvents make over their assets to brothers and friends. On this the decree provides that such a transfer (a) is an act of bankruptcy, (b) is a ground for refusing the discharge, and for withholding consent to a composition unless ~~it provides for~~ ^{is secured} payment of 25% of the debts and (c) is a crime punishable by 2 years imprisonment. I do not see what more the law can do. If those in whose interest these provisions are made do not avail themselves of them it is not the law or legal ~~officers~~ ^{administration} that are to blame.

The writer of the enclosure draws attention to the fact no trading license is required before a coolie starts trading as a merchant. The inference intended to be drawn seems to be that such a license is desirable and that before it is issued enquiries should be made by the powers that be as to the solvency and business capacity of the applicant. I have not heard any responsible person suggest such a policy. It would in my opinion be a departure from our English way of putting no obstacles in the way of enterprise and would involve the Government in a responsibility it ~~from the nature of the case, adequately discharge~~ could not fulfil.

As regards the keeping of books by bankrupt the law in England

the insolvents make over their assets to brothers and friends. On this the decree provides that such a transfer (a) is an act of bankruptcy, (b) is a ground for refusing the discharge, and for withholding consent to a composition unless ~~it provides for~~ ^{is made} payment of 25% of the debts and (c) is a crime punishable by 3 years imprisonment. I do not see what more the law can do. If those in whose interest these provisions are made do not avail themselves of them it is not the law or legal ~~attorneys~~ ^{administration} that are to blame.

The writer of the enclosure draws attention to the fact no trading license is required before a coolie starts trading as a merchant. The inference intended to be drawn seems to be that such a license is desirable and that before it is issued enquiries should be made by the powers that be as to the solvency and business capacity of the applicant. I have not heard any responsible person suggest such a policy. It would in my opinion be a departure from our English way of putting no obstacles in the way of enterprise and would involve the Government in a responsibility it ^{from the nature of the case, adequately, discharge} could not fulfil.

As regards the keeping of books by bankrupt the law in Zanzibar

is the same as ours. By Section 103 a person destroying or falsifying books is liable to 2 years imprisonment.

The provisions of the Zanzibar decree as to compositions follow the lines of the English Act of 1914. The duty of deciding whether a scheme should be approved rests on the judge. He can withhold his approval in any case that he thinks proper. If $\frac{2}{3}$ of the creditors are in favour of a composition it is prima facie to their interest that it should be approved but the law has given the judge power to withhold approval if public or other interests require it. I do not think ~~such~~ attention is called for.

The allegation that some creditors may be bribed ^{to consent to a composition} is easily made, but no provision of the law could make that impossible. If bribery is proved, it would invalidate the composition and be punishable, generally, as a fraudulent preference.

The case of Rajaballi Nasser, to which the writer of the enclosure refers to illustrate his points, seems to me to indicate the real cause of the complaints made by European traders viz. that they are not so strict as they ought to be in examining credentials before giving credit. A creditor who allowed the Indian boy of

14 years to run into his debt
should really blame no one but him-
self for his loss. A fortiori the
man who trusted him after his first
failure. I should deprecate any
alteration of the law which would
weaken the responsibility of a
creditor to enquire into the
character and standing of his intended
debtor.

Alb.
3/1/22.

Sir H. Ross

This has the appearance
of a man's aut.

? Copy of Sir H. Jeffrey's
letter dated 10/12/21, 2 bars,
with a copy of his statement of
accounts, with a copy of the
debtors' list, and the
legal opinions are satisfied
that no action, beyond
greater caution on the
part of Scottish merchants,
is required. In the event
of a copy of the
statement of accounts being
sent to the
debtor so far as the
debtors' list may
be concerned and

in which the
reason adopted
in the Indian
of 1916.

and tell Sir H. Jeffrey so that
he can copy it to the
debtor so far as the
loss is concerned as we
understand that, having regard to English
principles, the decree is apparently
final and that the remedy
must lie in the hands of
judicial authorities in
local traders

C. C. S. 3/1/22
at once
H. J. R.
3/1/22

14 years to run into his debt
should really close no one but him-
self for his loss. A fortnight the
man who trusted him after his first
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character and standing of his intended
debtor.

Al.

3/1/32

Sir H. Lyell

This has the appearance
of a novel rest.

? City of Sir H. Lyell's
letter to the: to Rest, to be
with a copy of his letter to the
committee, and a copy of the
report for the committee and
whether he is not and his
legal advisers are satisfied
that no action, beyond
greater caution in the
part of Southern merchants,
is required. I shall have
over it.

City of over report
& welcome to the
: City of Lyell for
shows us for as the
debtor's name may

During the time I have been in charge of this Branch I have
 revealed more and more as time goes on at the lax and haphazard methods
 under which business is carried on here generally, and I am sure that in
 no other place in the business world is it possible for the "dishonest"
 flourish so on this island. As you are probably aware a Trading License
 is not required to start trading in Zanzibar and a "shenzi" Indian with
 a handful of rupees can jump himself off of any "P. I." boat into the
 "Saxar and Lo," and behold, within a few days blow out as a fully
 fledged Merchant.

The "Powers that be" ask no questions as to his solvency, no
 enquiries are made as to the number and description of books kept by him
 he can keep either no books at all or double sets of books it all depends
 on how clever a rogue he is, if he files a petition in Bankruptcy it is
 impossible to prove if any pages are missing from any books he produces
 with the inevitable result that the Bankruptcy Laws as applied in the
 High Court of Zanzibar are a farce in which the European Merchants
 "Butt" on which the "jokes" are played. As an instance of how
 are managed take the recent case of Rajaballi Wasseer details of
 have supplied to the Chief Accountant from time to time. At
 Public Examination it appears that he started Trading at a
 age (14 I believe it was) his first venture being Produce,
 and by compromising with his creditors get off with paying
 starts business as a Piece Goods Merchant this time and in the
 of time fails, compromises, and pays 25%. Nothing daunted
 again as a Piece Goods Merchant and fails for the third time
 he has two previous failures against him, the Court has

sition deed and allows him to get away by paying 25% of his debt
 a month. On being questioned by myself he acknowledged that he was
 aware that he had been trading at a loss for the past 4 years, he had
 books older than 2 years all his previous books having been lost in a
 fire at his shop according to his statement, he admitted, however,
 that he lost nothing else in this particular fire. The books he di-
 vidual were improperly kept no records of prices obtained for goods
 sold being entered. Evidence relating to bribery to ensure the
 requisite number of signatures to the composition deed was brought
 forward, but he got out of this by saying "that if a bribe was offered
 it was offered without his knowledge" Notwithstanding the obvious
 weakness in his evidence he was allowed to compromise and no doubt
 in due season will again start trading.

It is the easiest thing in the world for an Indian Merchant
 to get the majority of his Creditors and merchants representing 75%
 of his liabilities to sign a composition deed, his own caste support
 him as a matter of course and bribery will invariably secure the rest
 of the Indian creditors, either in cash or goods, and unfortunately
 this latter is almost impossible to "bring home", and once the merchant
 has secured this percentage of signatures he has gone practically all
 the way to getting his Composition sanctioned by the Court as the
 Registrar here told me himself that the Judge very rarely goes against
 this.

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Reg. 29

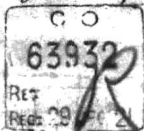
London House,
25 Crutched Friars,
London, E.C. 3.

December 28th., 1921.

Dear Bottomley,

I have just received the attached from the European Manager - a level headed man - of the Zanzibar branch of a large European firm. It was suggested that I should bring it before the London Chamber of Commerce with a view to formal representation to the Colonial Office on the necessity of stiffening up the laws of that Island in the matter of bankruptcy, with special reference to the practices of a good many of the Indian trader fraternity. It occurs to me that this is hardly an opportune moment to handle in public matters connected with the Indians in the East African group of countries, and that it may be better to send it to you informally. Possibly you might see your way to write to Sinclair, for I am very sure that he would wish to get his Island as "clean" as possible.

Of course, it is well known that the Bankruptcy Laws of Kenya and the other mainland territories are also in need of revision. That is a hardy annual, brought up to the various Protectorate Governments year after year for the last 15 years, to my own knowledge, by the various local Chambers of Commerce. As things are, a creditor has practically no protection, and the insolvents make over their assets to brothers and friends almost openly, and go off rejoicing, to open up again are long on the



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proceeds. This last year has seen a terrible crop of bankruptcies in the East African bazaars, and the losses of the European firms have been prodigious - in some part unavoidable no doubt, but much swelled, it is to be feared and indeed known, by malpractices on the part of Indian debtors.

The East African Governments are fond of appointing Committees and holding enquiries into all sorts of things, and if the Governors of Kenya and Uganda and the Resident of Tanganyika would only hold some enquiry into the causes and administration of local bankruptcy, they would earn the thanks of all honest business people, and do something to restore confidence in local trading - a very real desideratum.

Yours sincerely,

E. H. Bennett.

V. C. Bennett Esq., C.M., C.M.S.,
Colonial Office,
S.W.

-2-

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Yours sincerely,

E. H. Bennett.

C. H. Bennett Esq., C.B., C.M.G.,
Colonial Office,
S.W.

29.12.24

Dear Leggett,

Thank you for bringing

the bankruptcy matter to

my notice - we will look into

Of course I knew that there

are been a number of Andra

failures in East Africa, but

I had supposed that they

were the result of the bad times

in 3. every.

~~As you say,~~

low

in solvency.

~~As you say, it is~~

(w)

L/63932/21

E. Africa

Zanzibar



9 January, 1922

103

Sir,

I have the pleasure to transmit to you, the

enclosed copies for your observations,

the accompanying copies of correspondence

regarding the bankruptcy laws

of the Protectorate, together with

a memorandum on this subject

and my legal advice.

I shall be glad to learn whether

you and your legal advisers

are satisfied that no action

beyond greater caution on the

part of European merchants

is required, or whether you will

advise.

DRAFT.

my dear
confidential
P. Rendt.
MINUTE.

- Mr. Lumsden 4.1.22.
- Mr. Postma 4/1/22
- Mr. Bottomley 4/1/22
- Mr. Grindle.
- Sir H. Lambert.
- Sir H. Read.
- Sir J. Maitson Smith.
- Mr. Wood.
- Mr. Churchill.

Copy to Sirs
Kanga
by Conf.

Receipt 26 Dec

in case

to be issued 1.3.22

minutes in 63932/21)

2/1/22

that my attention to the law
dissemination of books
which would be very expensive
the interests of ourselves

(Signed) WINSTON S. CHURCHILL

Mr. McBottoming
Graham
2nd

L/63422/21

21/Jan

6 January 1922

Dear Leggett

We are consulting the
Government of Kenya, Uganda
and Zanzibar on the question
of bankruptcy law raised in

DRAFT.

Hampden
Leggett DSO

MINUTE.

- Mr. Lumbury 4/1/22.
- Mr. ~~Robert~~ Erhardt 4/1.
- Mr. ~~Robert~~ 4/1/22
- Mr. Grindle.
- Mr. H. Lambert.
- Mr. H. Read.
- Mr. J. Masterton Smith
- Mr. Wood.
- Mr. Churchill

your letter of December 28th,
but so far as the Zanzibar law
is concerned, we are not
that, having regard to English
principles, the Decree seems
sufficiently stringent, and
the remedy must be in the
direction of greater caution

3 after

giving credit to local traders.

Edgar West