

*Thursday,
13th June, 1889*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,

1889

VOLUME XXVIII



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1890.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 13th June, 1889.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I.,
G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.

The Hon'ble R. J. Crosthwaite.

NEW MEMBER.

The Hon'ble MR. CROSTHWAITE took his seat as an Additional Member.

CHARITABLE ENDOWMENTS BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to provide for the vesting and administration of property held in trust for charitable purposes. He said :—

“ This Bill is of an unambitious character. Its object is to provide in India an officer capable of discharging, in regard to certain classes of charities, the functions which are discharged in England by the Official Trustee of Charitable Lands and the Official Trustees of Charitable Funds; and thus to avoid the difficulty and expense which would otherwise attend the devolution of charitable property.

“ It has been a common practice in this country, when lands or funds have been appropriated to purposes of public charity, for the founders to vest them, sometimes by deed, and sometimes more informally, in public servants, such as the Collector of the District, the Director of Public Instruction, the Agent of a Railway Company or the Accountant General. But the trusts so created are personal, none of the offices held by these functionaries being corporate

[Mr. Scoble.]

[13TH JUNE,

offices, and the Law Officers have advised that, even if these gentlemen are 'appointed by the designation of their office only, and not by name, the trust-fund would vest in them as individuals, and they would remain trustees until they themselves appointed others to succeed them, or until they died,' in which latter case the trust-estate would pass to their executors or administrators.

"It is obvious that in the changing circumstances of Indian official life much confusion must have arisen from this state of facts, and that it would be difficult, if not impossible, after even the lapse of a comparatively short time, to trace back and discover in whom such trust-property was legally vested. Such an enquiry would involve considerable expense and would profit none but the lawyers. A more simple remedy is proposed by the Bill, namely, to empower the Governor General in Council to appoint a Government servant to be *virtute officii* Treasurer of Charitable Endowments for the territories subject to any Local Government, to constitute this Treasurer a corporation sole for the purpose of holding charitable property, and to vest the property in him 'as a passive bare or dry trustee,' leaving all powers of management to a committee elected or appointed for the purpose, and the constitution of which may be changed without affecting the legal devolution of the trust-property.

"No corporation appears to exist in India capable of acting as trustee in such cases as this Bill is designed to meet. The Secretary of State for India in Council and the Governor General in Council are incapable of being trustees (L. R. 15 Ch. D. 9). It has also been held that Anglican Bishops and Archdeacons in India, who have been constituted by letters patent to be perpetual corporations, with power to take and hold property under grant or license from the Crown, are not capable of acting as trustees in some of the cases which this Bill is intended to meet. To the question whether the Lord Bishop of Calcutta in his corporate capacity might not, under the letters patent for the Bishopric of Calcutta, bearing date the 14th May, 1814, hold land upon trust for a diocesan school, so that, upon his ceasing to be Bishop, it would devolve without a deed upon his successor in the bishopric, an eminent counsel in England, to whom the question was referred, has replied in the negative. 'It is quite true,' he remarks, 'that the Bishop is a corporation sole, and in that capacity can hold the lands belonging to his see. He may, however, only hold such lands as by grant or license from the Company (now Her Majesty) he is authorized to take, hold and enjoy. I think it is clear that the letters patent only refer to lands belonging to, or purchased out of moneys belonging to, the bishopric. * * * * * On the whole, I am of opinion that, if the land in question was conveyed to the Bishop as a trustee,

1889.]

[*Mr. Scoble.*]

it would pass on his death not to his successor but to his executors.' Nor can the provisions of the Official Trustee Act be resorted to in relief of charities of the class contemplated by the Bill. It is an essential feature of the proposal that the Treasurer shall not, as such, act in the administration of the trust-property, the management and control of which is intended to be left to others; whereas the Official Trustee is required to perform active duties with respect to trust-property vested in him, and is entitled to remuneration for his services; he could not therefore remain passive, and hand over his duties to a local committee.

" It will be observed that the charitable purposes to which the Act applies are limited in character. They include relief of the poor, education, medical relief and the advancement of any other object of general public utility; but they do not include any foundations which have religious teaching as an exclusive purpose. This limitation is in accordance with the policy which dictated Act XX of 1863, by which the Government of India relieved its officers from all duties involving any connection with mosques, Hindu temples and other similar religious establishments; and Act XVII of 1864, by which the Official Trustee is debarred from holding trusts for any religious purpose.

" It will also be noted that the Bill is of a purely permissive character. The Local Government will be unable to make a vesting order or frame a scheme except on application for that purpose; and may, if it sees fit, decline to take any action.

" Finally, the Bill reserves the powers of the Advocate General at a presidency to take action with respect to any charity within his jurisdiction. If more frequent advantage were taken of these powers in connection with section 539 of the Civil Procedure Code, we should probably hear fewer complaints of malversation and misappropriation in regard to native religious endowments."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CANTONMENTS.

[*Lieutenant-General Chesney.*] [13TH JUNE, 1889.]

CANTONMENTS BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the Hon'ble Mr. Crosthwaite be added to the Select Committee on the Bill to consolidate and amend the law relating to Cantonments.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 27th June, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA ;

The 14th June, 1889.

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