Friday,
7th March, 1890

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIX

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

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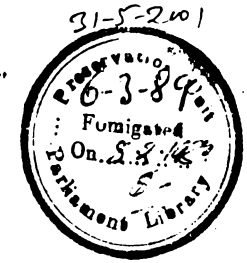

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1891

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 Government House on Friday, the 7th March, 1890.

PRESENT:

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 Sir G. T. Chesney, K.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 Rájá Durga Charn Laha, C.I.E.
The Hon'ble Maung Ôn, C.I.E., A.T.M.
The Hon'ble Muhammad Ali Khan.
The Hon'ble R. J. Crosthwaite.
The Hon'ble Sir A. Wilson, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

GUARDIANS AND WARDS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward. He said:—

"This Bill was introduced nearly four years ago by my hon'ble friend Mr. Ilbert, and, as the constitution of the Council has changed considerably since its introduction, I think it desirable, in presenting the Report of the Select Committee, to say a few words as to the objects of the measure and the general scope of its provisions.

"The Hindu and Muhammadan, as well as the English, law lays down certain general principles regarding the relationship of guardian and ward, and the application of these general principles has been regulated by several enactments of the Indian legislature. Besides the numerous local Regulations and Acts

constituting Courts of Wards for the different Provinces, and defining their powers and duties, there are several Acts of this Council making provision for the care of the persons and property of Hindu and Muhammadan minors not brought under the superintendence of these Courts. Act XL of 1858 was passed with this object for the Bengal Presidency, and its operation extends also to the North-Western Provinces and Oudh, the Punjab, Lower Burma, the Central Provinces and Ajmere. Act XX of 1864 reproduces for the Bombay Presidency, with some variations, the Bengal Act of 1858. Act IX of 1861 amends the law for hearing suits relative to the custody and guardianship of minors in British India generally. As regards minors who are European British subjects, the Supreme Courts, and afterwards the High Courts, had jurisdiction under their Charters; and Act XIII of 1874 provided for minors of this class resident in those parts of the country to which the jurisdiction of the chartered High Courts does not extend.

"In 1881 the Bombay Government drew attention to certain defects in Act XX of 1864, and suggested an amendment of the Act in order to remove difficulties which had been experienced in the administration of minors' estates under its provisions. Examination showed not only that the Bombay criticisms were sound as regards the particular Act in force in that Presidency, but that several of them were applicable to the Bengal Act also, and that there was room for material improvement both in the form and in the substance of the Acts generally. Before taking action, however, Local Governments and other authorities were consulted, with the result that the Bill now before the Council was introduced by Mr. Ilbert on the 12th of March, 1886.

"In his speech on that occasion my hon'ble friend indicated with great clearness the lines on which the Bill had been framed.

"'Nothing,' he said, 'can be further from my intention than to interfere with Hindu family customs or usages, or to force Hindu or Muhammadan family law into unnatural conformity with English law. But, on looking into the European British Minors Act, which was framed with special reference to the requirements of what may be called English minors, it appeared to me that almost all its simple and general provisions were applicable, or might with a little modification be made applicable, to Hindu and Muhammadan as well as to English guardians. . . . . Accordingly what I have done has been to take as my model the European British Minors Act, which is the latest and fullest of the Indian Acts relating to guardians, and to frame on its lines an Act applicable as a whole to all classes of the community, but containing a few provisions limited in their application to particular classes. . . . . It is not intended by this measure to make any alteration in Hindu or Muhammadan family law.'

"In the second place, my hon'ble friend stated—

"'The Bill will not repeal or supersede the enactments relating to the different Courts of Wards. The provisions of those enactments,' he said, 'are intimately connected with the administrative machinery of the different Provinces; and it would be either impossible, or at least very difficult, to supersede them by a general Act applying to the whole of India. They will accordingly be left outstanding. The Bill will relate only to such guardians as are appointed or recognized by the ordinary Civil Courts, and there will be an express saving for the jurisdiction and authority of the different Courts of Wards.'

"Lastly, my hon'ble friend proposed,

'in deference to what appear to be the views of the High Courts on this point, ... that the jurisdiction of the High Courts under their Charters is to be maintained alongside of their jurisdiction under the Act.'

"Since the Bill came into my hands the principles thus laid down have been carefully adhered to. Its provisions have been most attentively considered by two Select Committees, and it has been twice referred for opinion to Local Governments. If it now fails of completeness as a consolidation of the law on the subject to which it relates, it is not for want of consideration, but because consideration has shown the difficulties which stand in the way of complete treatment of so complicated a subject. *Ad ea quæ frequentius accidunt jura adaptantur:* exceptional cases must be left to be dealt with by the Courts of Law, as they arise.

"I do not propose to take up the time of the Council with a minute examination of the provisions of the Bill, but merely to call its attention to some of its principal enactments.

"In the first Chapter a minor is defined to mean a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority. That Act fixes the age of eighteen as the age of majority generally for persons domiciled in British India; but it postpones it to twenty-one years in the case of minors of whose person or property a guardian has been appointed by a Court of Justice or who is under the jurisdiction of a Court of Wards. In the opinion of the Select Committee it was considered desirable to adopt this definition, rather than leave the matter open to discussion. Where there is a distinct provision of the law upon any particular subject, it should, I think, unless the law is shown to require amendment, be followed in subsequent legislation. Acting on this principle, while adopting the definition of European

British subject given in the Code of Criminal Procedure, the Select Committee has extended that definition so as to include any Christian of European descent.

"In Chapter II, which relates to the appointment of guardians, we have provided (section 6) that in the case of a minor who is not a European British subject nothing in the Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject. And we provide that the Court may, upon proper application, either appoint or declare a person to be guardian, when it is satisfied that it is for the welfare of a minor that the care of his person or the management of his property should be entrusted to a guardian. We thus recognize both species of guardianship—that which arises independently of, as well as that which is created by, the action of the Courts. The High Court of Calcutta had expressed the opinion that, 'without compelling a *de facto* guardian in every case to come to the Court for a certificate, the Bill should be so framed as to make it necessary for guardians of large estates to place themselves under the control and supervision of the Court.' A special reference was made to ascertain the general opinion of the public on this point, with the result that the Select Committee have not adopted the suggestion of the High Court. The opposite view is tersely expressed in a letter from the Government of the North-Western Provinces and Oudh:—

"'After carefully considering the suggestion of the Hon'ble the Judges of the High Court at Calcutta, the Lieutenant-Governor is decidedly of the opinion that it is undesirable to add to the Guardians and Wards Bill any provision which would have the effect of making it compulsory in these Provinces to the guardians, even of large estates, to place themselves under the control of the Civil Courts. The facilities afforded by the present draft Bill for bringing estates, where that course is desired in the interests of the minor, under the charge of the Civil Courts are, he considers, amply sufficient. Any legislation which made it compulsory instead of optional might have the effect of deterring in many cases the fittest persons from accepting responsibility which is of an onerous nature even when exercised independently, and would add largely to the work of the Civil Courts without, as far as His Honour can see, securing any material compensating advantage to the estates.'

"To the same effect is the opinion of the Bombay Government:—

"'It appears to the Governor in Council, on a consideration of the advantages and disadvantages of the proposal that every *de facto* guardian of a minor and his estate should place himself under the superintendence of the Civil Courts, to be both needless and undesirable that such an enactment should be embodied in the Bill. In cases of large

estates or of complicated transactions, the *de facto* guardian will almost necessarily come to the Court for his own security, or will be brought into the Court by persons interested in the minor or his estate. If litigation and official interference can be avoided,—and in many cases they are clearly unnecessary,—it is distinctly beneficial that they should be avoided. The superintendence of a Court over the minute and detailed management of a considerable property or business cannot, in the opinion of the Governor in Council, be exercised without a great deal of expense, and must lead to elaborate explanations and measures for putting every transaction into an indisputable shape, such as are a serious clog on the effectual administration of ordinary affairs.'

"The Lieutenant-Governor of the Punjab is equally adverse to the proposal. The Secretary to the Government of the Punjab writes :—

"'As the Bill now stands, no guardian is compelled of his own motion to place himself under the control of the Court; but the Judge is empowered to apply the provisions of the law on the application of the Collector, the relative or friend of a minor, or a person desirous of being, or claiming to be, the guardian of the minor. It is because the Bill does not compel the Court to appoint or declare a guardian except upon good cause shown that in Sir James Lyall's opinion its provisions are not unsuitable to the present circumstances of the Punjab. If, however, the suggestion made by the Judges of the Calcutta High Court is accepted, rendering it necessary that in certain cases the law shall be applied, the Lieutenant-Governor would prefer that the provisions of the Act should not be applied to this province until extended by a Notification issued by the Government of India on the recommendation of the Local Government. It must be remembered that in the Punjab there are no large zamindari estates of the character of those existing in the North-Western Provinces and in Lower Bengal, and the Collector of a Punjab district has ample opportunities of knowing whether the interests of a minor who owns considerable property demand the assistance of the Court to secure him from loss in the management of that property. Therefore to compel all guardians of large estates to place themselves under the control and supervision of the Court would be to legislate for a condition of things scarcely existent in this province, where more interference than is absolutely necessary is to be deprecated.'

"Raja Rajendralala Mitra, in a letter of 25th October, 1889, speaking from an intimate knowledge of the feeling of Native society on the point, writes :—

"'It is well known that private guardians are more economical and useful than official guardians, but that such offices being entirely gratuitous there is no temptation to accept them, and every attempt to make them irksome by unnecessary multiplication of duties and responsibilities, by calls for periodical accounts, securities and bonds, is to cause a strong revulsion of feeling which would greatly reduce the number of eligible candidates. Nor is it at all required in the interests of wards and out of regard for the wills of the testators who provide for the custody of their minor sons and daughters and their

property. The strongest point urged refers to the submission of periodical accounts; but I am disposed to think it will be of little practical utility—a vain formality at best. I know of no Court which will have the patience and the leisure necessary to go through the domestic accounts of little boys; and, if it did, it will, in the absence of a contending party, do nothing to prevent waste or peculation.'

"It appeared to the Select Committee that there was much force in these objections, and, while giving guardians every opportunity and inducement to place themselves under the control of the Court, we have not thought it necessary or desirable to compel them to do so.

"Another important question has arisen with regard to the appointment of guardians of minors who are members of undivided Hindu families. My valued friend, our late colleague Rao Saheb Vishvanath Narayan Mandlik, whose assistance in the earlier labours of the Committee on the Bill I desire gratefully to acknowledge, called attention to this difficulty when the Bill was introduced, and framed a section which he considered would meet the case. He proposed that, when the Court had reason to believe that the interests of such a minor were in peril, it might appoint or declare a guardian to protect those interests, under such restrictions as would prevent him from interfering unduly with the powers of the managing member of the family. But upon mature consideration the Select Committee have not accepted this suggestion, which, so far as they can ascertain, is not approved by the Hindu community generally. It is well pointed out by Mr. Bipin Krishna Bose, Government Pleader in the Central Provinces:—

"'Where the property of a minor exists in no other shape than that of an interest in undivided property of a joint family governed by the Mitakshara, it is difficult to understand how a stranger can be introduced into the family to protect the interests of the minor without interfering with the powers of the managing member and in a manner changing the constitution of the joint family.

"'In a joint family under the Mitakshara there is absolute unity of ownership, and no member can claim to have any specific portion of the family income paid over to him as his share. All he can ask for is that he may be allowed the use of the family property along with the other members. For those who are interested in the welfare of a minor member, and who desire to secure to him the full fruition of his rights in the family estate, the only proper remedy is to procure for him a specific share by means of partition. To introduce a stranger in the joint family with powers of interference which must from the nature of the case be to a great extent vague and undefined would only lead to discord and disunion, and is very unlikely to bring about better management of the family estate. Generally, the self-interest of the managing member, and, where there are other adult

members, their supervision over his action, and in many cases ties of natural love and affection, would ensure proper management of the family property, in the benefit of which the minor would participate. Cases are rare where a managing member, by himself or in collusion with the other members, sets about wasting the family estate with a view to sacrifice the rights of a minor member. Under the Dayabhaga, however, the shares of the members are numerally defined before partition, and, although the particular portion which constitutes a member's share remains in an unidentifiable condition until partition, he may demand and obtain of the managing member his share of the family income. In such a case no disruption of the joint family would ensue if the Court were to make provision through a specially appointed manager for the disposal of a minor member's share of the profits for his sole and exclusive benefit.'

"No special provision has therefore been introduced into the Bill to meet these cases, as an adequate remedy appears to be available under the existing law.

"I have now disposed of the two main points of controversy which have arisen upon this Bill. Recognizing the right of the parent to appoint by will or other instrument a guardian for his infant children, the Bill also recognizes the duty of the Court to appoint a guardian where none has been appointed, and to decide between conflicting claims when several persons assert a title to the guardianship. The Bill lays down certain general rules for the guidance of Courts with respect to the considerations to be observed in appointing a guardian, and the most important of these will be found in sections 12, 15, 17 and 19.

"The third Chapter, relating to the rights, duties and liabilities of guardians, is taken principally from the European British Minors Act, and a guardian is placed, in reference to his dealings with the property of his ward, on very much the same footing as an executor or administrator with regard to the property of a deceased person. Section 33 provides that a guardian appointed or declared by the Court may apply to the Court for advice in the execution of his duties, and will be protected if he acts in good faith on that advice. This provision will, it is believed, have the effect of inducing guardians, especially where large estates are entrusted to them, voluntarily to place themselves under the supervision of the Court. Section 39 points out the circumstances under which the Court may interfere to remove any guardian, testamentary or otherwise, from his guardianship.

"The fourth Chapter contains supplemental provisions, the most important of which are those which relate to suits brought or defended on behalf of minors by next friends or guardians *ad litem*. These suits are often merely vexatious,

but are sometimes brought *bonâ fide* for the benefit of a minor whose guardian is either careless or corrupt. Section 53 endeavours to guard against abuse of the power of interference by providing that, if a minor has a guardian appointed or declared by a competent authority, a next friend shall not be allowed to institute any suit on behalf of the minor, except upon notice to the guardian and upon satisfying the Court that it is for the welfare of the minor that he should be permitted to do so. This, it is hoped, will have the effect of preventing much unnecessary litigation."

CHARITABLE ENDOWMENTS BILL.

The Hon'ble MR. SCOBLE also moved that the Report of the Select Committee on the Bill to provide for the Vesting and Administration of Property held in trust for charitable purposes be taken into consideration. He said:—

"The object of this Bill 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 diminish the difficulty and expense which would otherwise attend the devolution of charitable property.

"The scheme of the Bill has, I am glad to say, met with very general approval. It is admitted that the appointment of such an officer will be a convenience and advantage, as it will have the effect of securing the *corpus* of the trust-property without any interference on the part of the Executive Government with the administration of the trusts themselves. But doubts have been expressed in some quarters whether the Bill does not go too far; while others entertain the opinion that it does not go far enough.

"When I introduced the Bill in June last I stated that the charitable purposes to which it would apply were limited 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. In the Bill as approved by the Select Committee these purposes include relief of the poor, education, medical relief and the advancement of any other object of general public utility, but do not include purposes which relate exclusively to religious teaching or worship. It follows that the provisions of the Bill may apply to trusts for purposes partly charitable and partly embracing religious teaching, but I see no objection

to this so long as the Treasurer is a bare trustee or custodian of the trust-property, and the application of the Bill to a charitable endowment is dependent on the consent not only of the parties interested in the trust but of the Local Government. The necessity for this two-fold consent provides, in my opinion, every necessary safeguard against an improper use of the Bill that the most orthodox Hindu or Muhammadan or (I may say) Christian could require; and the important principle of non-interference by Government with the religious institutions of the country is thereby fully maintained.

"It may be satisfactory that I should quote to the Council the opinions on this point of some of the most important representative bodies among the Native community which show how public opinion is divided on the subject, and how premature it would be to reverse the policy which a quarter of a century ago transferred the protection of religious endowments from the executive to the judicial power. The Secretary of the British Indian Association writes—

"'After having carefully considered the provisions of the Charitable Endowments Bill my Committee are of opinion that it will remove a defect in our administrative agency the prejudicial effects of which are widely felt. An officer exercising the functions similar to those of the Official Trustee of Charitable Funds in the United Kingdom is required for this country. The Committee think that the proposed appointment of a Treasurer of Charitable Endowments would supply the want. The provision empowering Local Governments to invest public officers with the powers and functions of a 'corporate office' will further remove the inconvenience and legal disqualifications which at present attend the practice of making charitable endowments in favour of District Collectors and other public officers. The proposed measure therefore commends itself to the approval of the Committee.

'The Committee beg to observe with satisfaction that the Bill is confined to charitable endowments only. They think it would be a mistake to extend it to religious endowments, or to take under its purview endowments partly religious and partly charitable. They believe, however, that it is not the intention of Government to widen its sphere in such way.'

"The two Muhammadan Associations of Calcutta, on the other hand, would have preferred a larger application of the measure. The Secretary to the Central National Muhammadan Association is directed by his Committee to say that they—

'consider the Bill might have been amplified in scope so as to cover such endowments as are quasi-religious in character,'

and the Secretary to the Muhammadan Literary Society writes that—

'inasmuch as the Bill does not contemplate to bring under its operation the religious endowments, the Committee has nothing to say regarding the provisions contained therein. Most of the existing Muhammadan endowments,' he adds, 'as it appeared from the enquiry made by the Muhammadan Educational Endowments Committee which recently sat in Calcutta, are religious or quasi-religious in their character, and therefore the Committee of the Muhammadan Literary Society begs to submit that the Bill in its present form does not provide against the malversation of such endowments. Under the Muhammadan law it is one of the legitimate functions of the ruling Power to protect endowments from misappropriation, and the Committee would respectfully, but earnestly, suggest that the Bill be so extended as to meet the want which has been felt by the Muhammadan community since the repeal of Regulation XIX of 1810.'

"It is clear from these communications that opinions are as divergent as ever. But, while I sympathize with the desire of the Muhammadan community in Bengal to secure better management for their charitable endowments, I must remind them that the prevention of malversation is not the object of this Bill.

"The question of the management of such institutions was dealt with by Act XX of 1863, and it is not the fault of the Legislature if full advantage has not been taken of its provisions. When the Regulation of 1810 was repealed, the control of local committees was substituted for that of Government officers, in the hope that mosques, temples and other religious establishments would be conducted thenceforward in accordance with the general wishes of those most closely interested in their maintenance. If this result has not been attained, it is not the fault of the law but of a failure on the part of the communities themselves to avail themselves of it. The present Bill advisedly abstains from restoring the responsibility of Government in these matters; and this is, I think, in accordance with public opinion generally. The Collector of Surat took the opinions of the representatives of the three main religious bodies in that city—Parsis, Muhammadans and Hindus—on the Bill. The Parsi was ready to give it a liberal interpretation, but 'both the Musalman and the Hindu gentlemen were much against any semblance of interference with religious endowments'; and this, I am disposed to believe, fairly represents the state of feeling all over the country.

"Coming now to the proposals of the present Bill, section 3 provides that the Governor General in Council may appoint an officer of the Government by the name of his office to be Treasurer of Charitable Endowments for the

territories subject to any Local Government. It is intended that the Comptroller General shall fill this office in Bengal, and the Accountants General in Madras and Bombay. For the purposes of the Bill each of these officers will be a corporation sole, having perpetual succession and a corporate seal; and his duty will simply be to hold any property vested in him as a bare trustee. The high position of this officer will be a sufficient guarantee that the property will be safe in his hands; but provision is made in section 9 for the publication of his accounts, and in section 13 for the form in which they are to be kept and the mode in which they are to be audited. As the keeping of these accounts, the charge of investments, the collection of income and the performance of other duties which will fall on the Treasurer will be a cause of expense which cannot rightly be charged against the public revenue, the Governor General in Council is empowered to prescribe the fees which shall be paid for these services.

"The manner in which charitable endowments falling within the scope of the Bill may be brought under its operation is described in sections 4, 5 and 6 of the Bill. The services of the Treasurer may be made available both for existing, and for entirely new, trusts. Where property is already held in trust the person or persons acting in the administration of the trust, or a majority of them, and where it is intended to devote property to a charitable purpose the person or persons proposing so to devote it, may apply to the Local Government that the property may in either case be vested in the Treasurer and a scheme settled for its administration. The Local Government may thereupon, if it thinks fit, proceed to settle a scheme, giving effect to the wishes of the author of the trust so far as they can be ascertained and as is reasonable; and the scheme so settled will not be liable to be questioned in any Court. To this proposal a good deal of objection has been taken; it is said that the Local Government has not the knowledge or experience necessary to deal with such matters, and that they ought to be left to be dealt with by the Courts of law. But it must be borne in mind that no one need come to the Local Government unless he likes, and that those who do come will not be without good reasons for preferring the simple and inexpensive procedure provided by the Bill. It is not contemplated or intended that a Local Government should interfere in any case of doubt or dispute; and I should imagine that it would always consult its Advocate General or other Law Officer before taking action upon any application. The jurisdiction of the Courts in contentious cases will be left untouched; in cases where there is no contest, it is surely not necessary to compel a resort to the Courts.

"Nor does it appear to be necessary that the Treasurer should be placed under the control of the Court rather than of the Government. He will have nothing to do with the administration of the charity funds; he will simply hand over the income to the persons who, under the scheme, are entrusted with its administration, but who, in their turn, are left subject to the ordinary law in regard to the malversation or misappropriation of any funds that may come to their hands. In order to avoid any doubt on this point the authority of the Advocate General at a Presidency to take action in regard to any charity is expressly reserved by section 15 of the Bill."

The Hon'ble MR. HUTCHINS said:—

"With Your Lordship's permission I wish to say a few words regarding the applicability of this Bill to religious endowments.

"In 1863 the Executive Government divested itself and its officers of all powers and obligations connected with the administration of religious trusts and institutions. The powers and duties which till then had devolved on the Board of Revenue and District-officers were transferred to committees, and are, or ought to be, exercised by these committees subject only to the control of the District Courts. We hear a good deal about the inefficiency of these committees, but I am disposed to agree with my hon'ble friend that, if there has been a failure, it has not been the fault of the law but is principally, if not entirely, due to inertness and indifference on the part of those interested in the institution. The law provides abundant means for enforcing through the Court the proper discharge of their duties both by the supervising committee and by the manager in direct charge. I speak on this point from more than ten years' experience in the chief Court of a district containing two of the wealthiest and most venerated temples of the south—those of Madura and Rameswaram. It happens that these are good examples of the two great classes into which religious establishments were divided by the Act of 1863, the pagoda of Madura falling under section 3 of that enactment, while that at Rameswaram comes under section 4. The latter class is far more difficult to deal with, but this was the case even before the legislation of 1863. Both these temples came before me judicially on more than one occasion, and I may say without any fear of contradiction that the result, especially to that at Madura, was highly advantageous; that the orders issued effected a great improvement in the general management, and that in particular the funds were properly invested and the accounts reformed and periodically published in a manner which any one interested could understand.

"There is certainly no chance whatever that the Government will consent to reverse or materially modify its policy of non-interference, but it seems open to question whether there would be any serious objection to the corpus or principal fund even of a purely religious endowment being vested in some public officer as a bare trustee or custodian. This could hardly be said to amount to interference with the trusts themselves, and it seems to me—I am speaking for myself alone, and even for myself I do not express any decided opinion, but it seems to me—that any unanimous or very general wish on the part of any of the main sections of the community, that their religious endowments should be treated in this way, would be entitled to great consideration at the hands of the Legislature.

"Meanwhile, however, when this Bill becomes law, it will be applicable to trusts for charitable purposes, but not to trusts exclusively for the purpose of religious teaching or worship, and perhaps it is desirable that I should explain by means of an illustration what I understand to be the true import of this definition. It implies that it will not be a fatal objection that one of the objects is to promote religious teaching or to provide for religious worship. The best illustration which I can offer is the case of Diocesan schools, which the Committee had in view when it framed the definition. The purpose for which Diocesan schools have been established is not so much to give religious instruction as to prevent general education from being wholly secularized: there is some direct religious teaching, and the work of each day is begun and ended with some act of Christian worship; but the main aim and object is to impart a sound general education, pervaded throughout with a moral and religious tone. The funds of any trust founded on a mixed basis of this character may certainly be vested in the Treasurer, and the Local Government will be competent to sanction a scheme for its management. On the other hand, purposes exclusively religious are expressly excluded, and of course Local Governments will not permit any colourable evasion of the principle. In other words, if it should appear that the trust has been constituted mainly for a religious purpose, but that in order to bring it within the Act some secular purpose has been superadded, the application to vest the property in the Treasurer will be rejected. Doubtful cases must be expected to occur, but I am at present disposed to think that a safe rule to follow, while the law remains as enacted in this Bill, will be to grant the application only in respect of the secular objects, where these can be severed from the religious purpose with which they are combined; while, where they are all so incorporated together as to be incapable of separation, the application should generally be rejected if the greater, or even a large and substantial, part of the fund is to be expended

on a direct religious purpose. Certainly no trust should be accepted which involves the framing of a scheme regarding the detailed conduct of religious teaching or worship.

"I have thought it desirable to make these few observations because the powers to be vested in Local Governments are to be subject to the control of the Governor General in Council, and such control will have to be exercised in the Home Department. It will probably be desirable that the Government of India should be consulted before Local Governments undertake any trusts which are not clearly within the somewhat indefinite boundary line which has been enunciated."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS BILL.

The Hon'ble MR. SCOBLE also moved for leave to introduce a Bill to enable the Comptoir National D'Escompte de Paris to sue and be sued in the name of the Chief Manager for the time being of the Indian Agencies of the said Comptoir. He said:—

"This is in the nature of a private Bill, and is a reproduction, in favour of the Comptoir National D'Escompte de Paris, of the legislation of 1864 and 1867 in favour of the Comptoir D'Escompte de Paris, which has gone into liquidation.

"The Comptoir National D'Escompte de Paris is a French Banking Company, having its seat in Paris and constituted under French law, which carries on business in British India. The provisions of the Indian Companies Act are not applicable to such a Company; but under a treaty entered into, on the 30th April, 1862, between Her Majesty the Queen and the Emperor of the French, it was among other things agreed that the High Contracting Parties should mutually 'grant to all Companies and other Associations, commercial, industrial or financial, constituted and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the

other Power, subject to the sole condition of conforming to the laws of such dominions and possessions."

"The object of the Bill is to give the Comptoir National the benefit of this stipulation. It is clearly necessary, for the protection of this Bank and of those who have dealings with it, that no technical difficulties should stand in the way of its suing or being sued. The Bill accordingly provides that suits may be brought by or against the Comptoir National in the name of its Chief Manager, and under this designation is included an acting Chief Manager, and any person being or acting as Manager of the local Agency situated within the jurisdiction of the Court in which proceedings are taken. Analogous provisions are introduced for the purpose of facilitating criminal prosecutions. For the protection of persons dealing with the Comptoir National, the Chief Manager is required from time to time to file in the High Court memorials containing certain specified particulars, from which the public may derive information as to its constitution and operations. In all these respects the Bill follows the lines of Act VIII of 1864 and Act IX of 1867, under which the Comptoir d'Escompte worked satisfactorily for upwards of twenty years."

The Motion was put and agreed to.

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

The Hon'ble MR. SCOBLE then moved that the Bill be taken into consideration at the next meeting of the Council.

The Motion was put and agreed to.

The Council adjourned to Friday, the 14th March, 1890.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 11th March, 1890.

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