

*Friday,
12th February, 1892*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

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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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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 12th February, 1892.

PRESENT :

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

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

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

The Hon'ble Sir A. E. Miller, Kt., ~~Q.C.~~

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble Nawab Ahsan-Ulla Bahadur, C.I.E.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble J. Nugent.

The Hon'ble J. Woodburn, C.S.I.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble Dr. Rash Behari Ghose.

The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.

The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

GOVERNMENT MANAGEMENT OF PRIVATE ESTATES BILL.

The Hon'ble SIR PHILIP HUTCHINS moved for leave to introduce a Bill to provide for the levy of a rate on private estates under the management of Government to meet the cost of superior supervision and management. He said :—

" In this country Government is landlord paramount and to a certain extent patriarchal. It intervenes for the protection of private estates in a variety of contingencies, and in order to protect them assumes their management. This is perhaps best understood in connection with the action of the Court of Wards, the popularity of which is both well deserved and universal ; but incumbered estates have often been saved from the hammer by the intervention of Government, either after effecting an arrangement with the creditors, or under the provisions of the Code of Civil Procedure, when a decree-holder presses for a sale. The laws for the recovery of revenue also favour the attachment and management of estates which fall into arrears rather than the sale either of the whole or a substantial part of them.

"But all such management costs money and occupies to a greater or less extent valuable time of public officers who are the paid servants of the tax-payers. In some cases the immediate administration of the estate is entrusted to a special paid manager under the Collector, but there must still be a good deal of supervision by the Collector himself, and probably by yet higher officers; and such supervision entails also considerable contingent expenditure. In many cases too even the direct management is undertaken by an officer in the position of a tahsildar.

"The fundamental principle of the Bill which I now seek to introduce is that all such management is for the benefit of the private estate and should be paid for out of its income and not out of the pocket of the general tax-payer. The mere enunciation of the principle shows its fairness: the unfairness is to charge the public for services rendered to individuals. There is indeed another legal principle that no trustee should be allowed to make money for himself out of his trust, but even under the most jealous system of equity every trustee is permitted to charge for the services of his establishment, and that is all that I propose to do.

"There is only one case in regard to which I can foresee the possibility of objection, and that is the case of estates attached for arrears of revenue. It might be said that in this instance the attachment is for the benefit of Government, or, in other words, for the benefit of the general tax-payer, and that Government or the tax-payer should bear the expense. But, as I have already indicated, if the realization of the revenue is considered alone, it will be best secured by a summary sale of the estate. The grounds for preferring a temporary sequestration are a lenient consideration for the defaulter and his family, and a reluctance to proceed to extremities where milder measures are likely to prove efficacious. Even in this instance therefore the management is really undertaken for the benefit of the defaulting proprietor or others interested in the preservation of the estate.

"Assuming then that all the cost of management, so far as it can be estimated, ought to be thrown on the estate, I will now explain how my Bill secures this object. By section 3 I authorise a Local Government to impose a rate on all private estates under the management of its officers. The rate is in no case to exceed 4 per cent. of the income, which, having regard to the commission payable to private agents or to receivers appointed by the Courts, is certainly not an excessive maximum. But it is further provided that the actual rate shall be calculated from time to time so as just to cover, as nearly as may be, (1) the real cost of public establishments employed on, or in connection with,

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[*Sir Philip Hutchins.*]

the management, and (2) the incidental expenditure on contingencies. Power is reserved to reduce or remit the rate in special cases, as where special managers are employed and only control and supervision supplied by public officers. Section 4 relates to charges for audit and legal advice, and allows Local Governments the option of prescribing special fees for such services or including them in the general rate. Where they are rendered by what are known as whole-time officers the latter alternative will probably be chosen, but there has been a practical difficulty in the way of laying this down as a universal rule.

"Section 6 validates charges of the nature of those now to be authorized which have been levied in the past. For in several provinces a general rate has already been levied on estates under the Court of Wards and credited to the public exchequer to meet the estimated cost of supervision and management by Government officers. I do not for a moment say that such a charge is even now illegal under the laws applicable to the particular provinces, but it is desirable to place its propriety beyond question.

"The other provisions of the Bill are merely incidental, except perhaps section 8. This constitutes the Local Government the sole judge of the value of the work entailed on its establishments, and will prevent the amount of the rate being questioned in a Civil Court, so long of course as it is within the very moderate maximum of 4 per cent."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

The Hon'ble SIR PHILIP HUTCHINS 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.

The Council adjourned to Friday, the 4th March, 1892.

S. HARVEY JAMES,

*Secretary to the Government of India,
Legislative Department.*

CALCUTTA ;
The 12th February, 1892. }