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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 13th June 1889 :

Bill No. 4 of 1889.

A Bill to provide for the Vesting and Administration of Property held in trust for charitable purposes.

WHEREAS it is expedient to provide for the vesting and administration of property held in trust for charitable purposes; It is hereby enacted as follows :—

Title, extent and commencement.

1. (*1*) This Act may be called the Charitable Endowments Act, 1889.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force on the first day of April 1890.

Definition.

3 Eliz., c. .]

2. In this Act "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include religious teaching as an exclusive purpose.

Appointment and incorporation of Treasurer of Charitable Endowments.

3. (*1*) The Governor-General in Council may appoint a servant of the Government by the name of his office to be Treasurer of Charitable Endowments for the territories subject to any Local Government.

[16 & 17 Vict., c. 137, s. 47: and 18 & 19 Vict., c. 124, s. 15.]

(*2*) Such Treasurer shall, for the purposes of taking, holding and transferring moveable or immoveable property, be a corporation sole by the name of the Treasurer of Charitable Endowments for the territories subject to the Local Government, and shall have perpetual succession and a corporate seal, and may sue and be sued in his corporate name.

Orders vesting property in Treasurer.

4. (*1*) Where any property is held or is to be applied in trust for a charitable purpose, the Local Government, if it thinks fit, may, on application made as hereinafter mentioned, and subject to the provisions of sub-section (*2*), order, by notification in the official Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as may be agreed on between the Local Government and the person or persons making the application, and the property shall thereupon so vest accordingly.

[16 & 17 Vict., c. 137, s. 48: and 23 & 24 Vict., c. 136, s. 2.]

(*2*) The Local Government shall not make an order under sub-section (*1*) for the vesting in the Treasurer of Charitable Endowments of

[Act XI, 1876, s. 36: and Act II, 1882, s. 20.]

any securities for money except the following, namely :—

(*a*) promissory notes, debentures, stock and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

(*b*) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

(*c*) stock or debentures of, or shares in, Railway or other Companies, the interest whereon has been guaranteed by the Secretary of State for India in Council;

(*d*) debentures or other securities for money issued by or on behalf of any local authority in exercise of powers conferred by an Act of a legislature established in British India;

(*e*) a security expressly authorised by any order which the Governor-General in Council may make in this behalf.

[16 & 17 Vict., c. 137, ss. 54 *et seqq*: 23 & 24 Vict., c. 136, s. 2: and 46 & 47 Vict., c. 36, ss. 11 *et seqq*.]

Schemes for administration of property vested in the Treasurer.

5. (*1*) The Local Government may, if it thinks fit, on application made as hereinafter mentioned and with the concurrence of the person or persons making the application, settle a scheme for the administration of any property which has been, or is to be, vested in the Treasurer of Charitable Endowments.

(*2*) A scheme settled under this section shall come into operation on a day to be appointed by the Local Government in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until another such scheme has been substituted in its stead.

[32 & 33 Vict., c. 56, ss. 46 and 47: and 46 & 47 Vict., c. 36, ss. 35 and 36.]

(*3*) Such a scheme shall supersede any instrument or direction relating to the subject-matter thereof and in any way repugnant thereto, and its validity shall not be questioned in any Court.

[32 & 33 Vict., c. 56, s. 30.]

(*4*) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they can be ascertained and, in the opinion of the Local Government, effect can reasonably be given to them.

(*5*) Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments it shall not be brought into operation until the property has become so vested.

Mode of applying for vesting orders and schemes.

6. (*1*) The application referred to in the two last foregoing sections must be made,—

(*a*) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust or, where there are more persons than one so acting, then by those persons or a majority of them, and

(*b*) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.

(*2*) For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust.

Exercise by Governor-General in Council of powers of Local Government.

7. (*1*) The Governor-General in Council may exercise all or any of the powers conferred on the Local Government by sections 4 and 5.

(*2*) When the Governor-General in Council has signified to the Local Government his intention of exercising any of those powers with respect to any property, that Government shall not, without his previous sanction, exercise them with respect thereto.

Bare trusteeship of Treasurer.

8. (*1*) Subject to the provisions of this Act, a Treasurer of Charitable Endowments shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.

[16 & 17 Vict., c. 137, s. 52.]

(*2*) Such Treasurer shall keep a separate account of each property for the time being so vested which, or in so far as it, consists of securities for money, and shall dispose of the income of such property in accordance with the provision made in that behalf in the vesting order under section 4 or in the scheme, if any, under section 5 or in both those documents.

[16 & 17 Vict., c. 137, s. 50.]

(*3*) In the case of any property so vested other than securities for money, such Treasurer shall, subject to any general or special orders which he may receive from the Local Government, permit the persons acting in the administration of the trust to have the possession, management and control of the property, and the application of the income thereof, as if the property had been vested in them.

Annual publication of list of properties vested in Treasurer.

9. A Treasurer of Charitable Endowments shall cause to be published annually in the local official Gazette, at such time as the Local Government may direct, a list of all properties for the time being vested in him under this Act and an abstract of all accounts kept by him under sub-section (*2*) of the last foregoing section.

Limitation of functions and powers of Treasurer.

10. (*1*) A Treasurer of Charitable Endowments shall always be a sole trustee, and shall not, as such Treasurer, take or hold any property otherwise than under the provisions of this Act, or, subject to those provisions, transfer any property vested in him except in obedience to a decree divesting him of the property, or in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him.

(*2*) Such a direction may require the Treasurer to sell or otherwise dispose of any property vested in him and, with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security for money as is mentioned in section 4, sub-section (*2*), clause (*a*), (*b*), (*c*), (*d*) or (*e*), or in the purchase of immoveable property.

Provision for continuance of office of Treasurer in certain contingencies.

11. If the office held by a servant of the Government who has been appointed to be a Treasurer of Charitable Endowments is abolished or its name is changed, the Governor-General in Council may appoint the same or another servant of the Government by the name of his office to be such Treasurer, and thereupon the holder of the latter office shall be deemed for the purposes of this Act to be the successor in office of the holder of the former office.

Transfer of property from one Treasurer to another.

12. If by reason of an alteration of the limits of the territories subject to a Local Government, or for any other reason, it appears to the Governor-General in Council that any property vested in a Treasurer of Charitable Endowments should be vested in another such Treasurer, he may direct that the property shall be so vested, and thereupon it shall vest in that other Treasurer and his successors as fully and effectually for the purposes of this Act as if it had been originally vested in him under this Act.

Power to frame forms and make rules.

13. The Governor-General in Council may frame forms for any proceedings under this Act for which he considers that forms should be provided, and make such rules consistent with this Act as he may deem expedient for carrying into effect the purposes thereof.

Indemnity to Government and Treasurer.

14. No suit shall be instituted against the Government in respect of anything done or purporting to be done under this Act, or against a Treasurer of Charitable Endowments except for divesting him of property on the ground of its not being subject to a trust for a charitable purpose, or for making him chargeable with or accountable for the loss or misapplication of any property vested in him, or the dividends, interest or income thereof, where the loss or misapplication has been occasioned by or through his wilful neglect or default.

Saving with respect to Advocates-General and Official Trustees.

15. Nothing in this Act shall be construed to impair the operation of section 111 of the Statute 53 George III, Chapter 155, or of any other enactment for the time being in force, respecting the authority of an Advocate-General at a presidency to act with respect to any charity, or of sections 8, 9, 10 and 11 of Act No. XVII of 1864 *(an Act to constitute an Office of Official Trustee)* respecting the vesting of property in trust for a charitable purpose in a Official Trustee.

[4 Moore's I. A. 190.]

STATEMENT OF OBJECTS AND REASONS.

On many occasions the want has been felt in India of an official capable of discharging the functions which are discharged in England by the Official Trustee of Charity Lands and the Official Trustees of Charitable Funds. The object of this Bill is to meet that want.

2. Much property has from time to time in different parts of India been vested by founders in public servants, such as the Collector, Director of Public Instruction, Accountant-General and Divisional Commissioner. With respect to a case in which an Accountant-General and a Divisional Commissioner had been named as trustees, the Officiating Advocate-General of Bengal and the Officiating Standing Counsel stated in a joint opinion in 1885 that persons cannot, as holders of certain posts, be appointed trustees "unless these posts are corporate ones." "Neither the office of the Accountant-General nor that of the Commissioner," they observed, "is a corporate office; and even if 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."

3. There is a difficulty in India in finding any corporation capable of acting as a 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 for which this Bill is intended to provide. 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, it would pass on his death not to his successor but to his executors."

4. The Bill, it will be observed, is of a purely permissive character. The 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, refuse to act. The corporation sole in whom as Treasurer of Charitable Endowments property may be vested is, except as regards the disposal of any property by direction of the Government, to have nothing to do with the administration of the property. He is to be a bare trustee, the object of vesting the property in him by his name of office as a corporation sole being to secure the holding of the property by some one always present, and to avoid the difficulty and expense of appointing a new trustee on the retirement or death of any incumbent of the trust.

(Signed) ANDREW R. SCOBLE.

S. HARVEY JAMES,
Secretary to the Government of India.

The 7th June 1889.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

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