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G.O., No. 689

DATED 27. 11. 01.

INDEXED.

N. P.

ORIGINAL

[Despatch Abstract.]

Bruck's Memorial School

Declining to interfere in the matter of the
resumption by the St Stephen's Church Committee
of ~~certain~~ property belonging to the Church, for
the trustees of the ———

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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Government {1901} of Madras. EDUCATIONAL.

Recd.

Regd.

} 1901.

Enclosures

Spare copies

ORIGINAL

G.O., No. 689, 27th November 1901.

N. P.

NOVEMBER.

Breek's Memorial School.

Stating that the Governor in Council is unable to interfere in the matter of the resumption by the St. Stephen's Church Committee from the trustees of the — of certain property belonging to the church.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

READ—the following paper :—

From C. M. MULLALY, Esq., I.C.S., Collector of the Nilgiris, to the Secretary to Government, Educational Department, dated Ootacamund, 2nd September 1901, Cur. No. 1517.

The Church Committee in its resolution, dated 13th January 1873, transferred the church property now let to Messrs. Smith & Sons to the trustees of the Breek's Memorial school under certain conditions, as it seemed probable that a school on a wider basis and receiving aid from Government would be likely to attract more scholars and to be of a more permanent character than any which the Church Committee may be able to establish themselves. The full text of this resolution is printed at page 4 of the accompanying printed memorandum prepared by me giving all the important correspondence relating to the school.

2. On the 1st July 1874 a trust deed was executed, in which it was laid down that it shall be the duty of the trustees, so long as the property belonging to St. Stephen's church be vested in their hands, to have special care that the conditions of that trust are faithfully carried out.

3. It will be seen that the assignment of the church property to the Breek's memorial trust was nearly one year anterior to the original trust deed of the Breek's Memorial school and it forms an integral part of the trust deed itself.

4. On the 18th January 1901, i.e., 28 years after the assignment of the land to the Breek's trust, His Lordship the Bishop of Madras gave his sanction to the Church Committee to resume the property on the understanding that the condition relating to daily religious instruction had not been fulfilled, and the terms of the trust, therefore, not faithfully carried out. In furtherance of this sanction the solicitor for the lay trustees sent a notice to the secretary of the Breek's Memorial school of the intention to resume possession of the shop and premises rented to Messrs. Smith & Sons.

5. This subject was laid before a meeting of the Breek's memorial trustees held on the 24th May and it was resolved that the properties should be given back. In accordance with this resolution, the enclosed deed has now been forwarded by Mr. Edge with his letter, dated 27th August 1901, and this was again laid before a meeting of the Breek's trustees on the 18th instant and was carried by Mr. Giles and Mr. Handcock, myself dissenting, and Captain Williams, the other trustee, being absent.

6. The main condition of the grant is given in clause (iv) of the resolution at page 4 of the printed memorandum, in which it is laid down that it shall be one of the fundamental rules that the school shall be each day opened with prayer to be followed immediately by religious instruction. I enclose a copy of statement taken from the headmaster who has been in the school for the last 13 years and during all this time religious instruction of some sort has always been given. Up to date the school is opened at 10 A.M. with prayer and a chapter of the Bible which lasts for about ten minutes. In addition to this, we have the religious instruction once a week

by the chaplain. This more or less has been the practice for the last 13 years and has never hitherto been objected to and is, I submit, a sufficient compliance with the terms of the trust.

7. It is especially laid down in the trust deed itself that it shall rest with the Breek's trustees to prescribe what form of prayer shall be used at the opening of the school and what portions of Scripture may or may not be read, and *in case of complaint to prescribe generally the course of religious instruction* and to fix the time that shall be allotted to such instruction. As above stated it will be seen that the school is opened with prayer and a chapter of the Bible and Tuesday is now set apart for religious instruction by the chaplain, and prior to this there has been no complaint. If the chaplain considers that this is not a sufficient compliance with the terms of the grant, he should state what his opinion and wishes are and then, according to the trust deed itself, it rests with the Breek's trustees, in case of complaint, to prescribe generally the course of religious instruction, etc.

8. It must also be remembered that another condition of trust deed is that the instruction imparted in the school *during school hours* shall be of a secular character. At first sight it appears that the terms of the trust deed are contradictory; but this can be reconciled by the fact that secular instruction should be imparted during school hours and religious instruction out of school hours, when, as the headmaster says, non-Protestant boys do not stay in the school building. The trustees, therefore, have to be careful that their instructions under one part of the trust do not conflict with the other part of the deed.

9. Such being the case, it seems somewhat precipitate of the lay trustees to attempt, without complaint, to resume the emoluments. It also appears to me contrary to the broad views enunciated by the Church Committee in 1873 that a school on a wider basis and receiving aid from Government would be likely to attract more scholars and be of a more permanent character.

10. Under these circumstances, I do not consider the Breek's trustees justified in relinquishing this property and therefore recorded my dissent. If the Church Committee wish to lay any formal complaint or suggest any course of religious instruction the Breek's trustees are quite prepared to give it their best consideration, and under the trust deed it rests with them to decide. I request the favour of orders of Government.

ENCLOSURES.

STATEMENT taken from the headmaster.

I have been in the Breek's school for the last 13 years. I was a pupil in 1886-87. Religious instruction was given every day out of school hours by the headmaster Mr. Kenrick. He was succeeded by Mr. Moss in 1888 and the same practice continued for some time, religious instruction being given by Mr. Clay, the first assistant master. I became one of the masters in the school in 1888. During Mr. Moss' time the chaplain came once a week to give religious instruction, the time-table being arranged so as not to interfere with the secular instruction of non-Protestant boys. Mr. Moss was succeeded by the Rev. G. S. Burgess, who gave religious instruction from 9-45 to 10-15 not interfering with the secular education. In addition to this the chaplain visited the school once a week as usual. Mr. Burgess was succeeded by Mr. Hodgson, during whose time the practice continued. I succeeded Mr. Hodgson as headmaster and the same practice has continued. I have been a master in the school for the last 13 years and during all this time (I was away for one year) religious instruction of some sort has always been given. Even during the time of Mr. Malden he used to visit the school once a week, and it is so entered in the time-table which I shall send. Up to date the school is opened at 10 A.M. with prayer and a chapter of the Bible which lasts for about ten minutes and during this time non-Protestant boys do not stay in the school building. In addition to this, we have religious instruction once a week by the chaplain, and Mr. Malden during his incumbency regularly gave religious instruction. I don't know why he objected. He made no complaint about there not being proper religious instruction. Mr. Giles has not yet attended. Just before leaving, Mr. Malden wrote to me that he was sorry he could not attend that morning and adding that he would ask Mr. Giles to continue the work.

7th September 1901.

W. VESEY BROWN,
Headmaster.

PROCEEDINGS of the meeting of the Breeks' trustees held on the 18th September 1901.

Read draft deed of reassignment of church property now known as Smith's shop.

Proposed by Mr. Handcock that the resolution of 24th May be confirmed.

Seconded by Mr. Giles.

Passed—Mr. Mullaly dissenting.

Title-deed.

THIS INDENTURE made the Twenty sixth day of August One thousand nine hundred and one BETWEEN CHARLES MYLNE MULLALY of Ootacamund in the District of Nilgiris I.C.S. Acting Collector of the Nilgiris EDWIN FRASER HANDCOCK Chairman of the Ootacamund Municipal Council CHARLES HERBERT MALDEN Chaplain of St. Stephens Church Ootacamund and CHARLES LOUIS WILLIAMS Surgeon Captain in the Indian Medical Service and Civil Surgeon of Ootacamund the Trustees for the time being of the Breeks Memorial School Ootacamund (hereinafter called "The Transferors" which expression shall include where applicable their respective successors in office and assigns) of the one part and the said CHARLES HERBERT MALDEN and JOSIAH PHILIP CRAMPION NEVILLE of Ootacamund Brigadier General and Deputy Adjutant General of the Madras Command and CHARLES AYLMEY LIARDET also of Ootacamund Colonel of the Madras Army (retired) being the Chaplain and the Lay Trustees for the time being of St. Stephens Church Ootacamund (hereinafter called "The Transferees" which expression shall include where applicable their respective successors in office and assigns) of the other part WHEREAS by an Indenture dated the First day of July One thousand eight hundred and seventy four and made between James Law Lushington Morant, Edward James Coningsby Brace, William Henry Schmidt, Charles James Richards and Henry Bidewell Grigg being Members of the Breeks Memorial School Committee of the first part the Commissioner of the Nilgiris the Vice President of the Ootacamund Municipality the Chaplain of Ootacamund and the Senior Civil Surgeon of Ootacamund who were then the Trustees of the Breeks Memorial School of the second part and the Chaplain and the Lay Trustees for the time being of St. Stephens Church of the third part the parties thereto of the third part did thereby grant and convey the premises hereinafter described and intended to be hereby reassigned and more particularly described in the Schedule hereto unto the Trustees of the said Breeks Memorial School and their successors TO HAVE and TO HOLD the same unto and to the use of the said Breeks Memorial School Trustees and their successors upon trust to permit the profits arising from the said premises to be used for the benefit of the said Breeks Memorial School but subject to the conditions and stipulations therein contained or referred to with power reserved to the said Chaplain and Lay Trustees to resume possession of the said premises with the consent and concurrence of the Lord Bishop of the Diocese and on giving six months notice in the event of a departure from all or any of the said conditions or stipulations contained in or referred to by the now reciting Indenture AND WHEREAS by an Indenture of Lease made the First day of September One thousand eight hundred and ninety four between the then Trustees of the Breeks Memorial High School of the one part and Edward William Smith of Ootacamund Chemist of the other part the said premises were demised by the said Trustees of Breeks Memorial High School to the said Edward William Smith his executors administrators and assigns from the First day of September One thousand eight hundred and ninety four for the term of twenty five years subject to the payment of the monthly rental of Rupees seventy thereby reserved and the covenants and conditions therein contained AND WHEREAS the Transferors have in the opinion of the Transferees failed to carry out the conditions and stipulations mentioned in the hereinbefore recited Indenture of the First July One thousand eight hundred and seventy four in their entirety and on account of such default on the part of the Transferors the Transferees have (with the consent of the present Lord Bishop of the Diocese) given on the Thirty first day of January One thousand nine hundred and one to the Transferors the requisite six months notice of their intention to resume possession of the said premises (which notice the Transferors do hereby acknowledge to have received) and have requested the Transferors to reassign the said premises to them and the Transferors have consented and agreed to make such reassignment as is hereinafter contained NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement the Transferors do and each of them doth hereby reconvey and reassign unto the Transferees all that piece or parcel of land situate at Ootacamund aforesaid TOGETHER with the shop and buildings thereon and now occupied by the said Edward William Smith which said piece of land is more particularly described in the Schedule hereto and all and singular other the premises comprised in the hereinbefore recited Indenture of First day of July One thousand eight hundred and seventy four TO HOLD the said premises unto the Transferees as and from the First day of August One thousand nine hundred and one subject to and with the benefit of the hereinbefore recited Indenture of Lease AND the Transferors do and each of them doth hereby COVENANT with the Transferees so far as relates to their own acts and omissions only that they the Transferors have not done or knowingly suffered or been party or privy to anything whereby the said premises

are is or can be impeached incumbered or affected in any manner whatsoever or whereby they the Transferors are in anywise prevented from reassigning the same premises or any part thereof in manner aforesaid IN WITNESS whereof the Transferors have hereunto set their respective hands and seals the day and year first above written

THE SCHEDULE above referred to.

District.	Sub-district.	Village or town.	Name, boundaries, etc.
Nilgiris	Ootacamund ..	Ootacamund ..	Name.—"Smith & Son's Shop", formerly known as "Church Cottage", part of Survey No. C 271. North.—Native Christian Church, part of Survey No. C. 271. South.—Survey No. C. 274. East.—Commissioner's Road. West.—Survey No. C. 270.

SIGNED SEALED and DELIVERED by
the above named CHARLES MYLNE
MULLALY in the presence of

SIGNED SEALED and DELIVERED by the
above named EDWIN FRASER HAND-
COCK in the presence of
N. GANAPATI IYER,
Clerk, Collector's Office, Ootacamund.
SYDNEY V. EDGE.

E. F. HANDCOCK.

SIGNED SEALED and DELIVERED by
the above named CHARLES HERBERT
MALDEN in the presence of
SYDNEY V. EDGE,
S. A. WALKER,
Solicitors, Ootacamund.

C. H. MALDEN,
Chaplain of Ootacamund.

SIGNED SEALED and DELIVERED by
the above named CHARLES LOUIS
WILLIAMS in the presence of

ORDER—No. 689, Educational, dated 27th November 1901.

The Governor in Council is unable to interfere in the matter.

(True Extract.)

C. J. WEIR,
Ag. Secretary to Government.

To the Collector of the Nilgiris, with deed.

NOTES CONNECTED WITH G.O., No. 689, EDUCATIONAL, DATED
27TH NOVEMBER 1901.

[SUBJECT.—*Endowment of the Breeks' Memorial school, Ootacamund.*]

For Orders—

The chaplain and lay trustees of St. Stephen's Church, Ootacamund, transferred to the trustees of the Breeks' Memorial school in 1873 a piece of land with a building thereon on the following conditions:—

(1) that the chaplain of the station shall be *ex-officio* a member of the governing body of the school;

(2) that the lay trustees of St. Stephen's shall be *ex-officio* visitors of the school;

(3) that the headmaster of the school shall always be a Christian and a Protestant;

(4) that the school shall daily open with prayer to be followed immediately by religious instruction at both of which all children of Protestant Christian parentage shall be required to attend unless their parents object in writing;

(5) that the church committee shall retain the power of at any time resuming the property on giving 6 months' notice, should the trustees of the Memorial school fail to carry out the conditions on which the transfer is made in their full integrity and provided that such resumption shall not be effected without the consent of the Bishop; and

(6) that the trustees of the Breeks' Memorial school shall be responsible for the maintenance of the property in good and proper order during such time as it shall remain in their hands.

(*Vide* Proceedings of the church committee, dated 3rd September 1873, printed at page 4 of the memorandum forming an enclosure to the current; also G.O., No. 52, Educational, dated 26th February 1874.)

2. The property in question is now leased to Messrs. W. E. Smith & Sons for 25 years from 1st September 1894 at Rs. 70 per mensem. It is reported that Messrs. Smith & Sons have erected a handsome new building on the land and that at the expiration of the lease this building will revert to the trustees and will then fetch a monthly rental of at least Rs. 260—*vide* page 17 of the memorandum above referred to.

3. In January last the church committee obtained the sanction of the Bishop, in accordance with condition No. 5 given above, to resume the property on the ground that the condition relating to daily religious instruction had not been fulfilled and that the terms of the trust had not therefore been faithfully carried out. In pursuance of this the solicitor of the church committee served a notice on the secretary of the Breeks' Memorial school on the 31st January last saying that the church committee would resume the property on the expiration of six months from that date. The trustees of the Breeks' Memorial school met on the 24th May last and resolved to give back the property to the church committee, the Collector apparently not voting. In accordance with this resolution a deed of transfer was prepared and was laid before a meeting of the trustees on the 18th September last. It was approved by two trustees, Messrs. Giles and Handcock, the Collector dissenting and Captain Williams, the other trustee, being absent.

4. The Collector now submits the case for the orders of Government. He states that the school daily opens with prayer and the reading of a chapter of the Bible which lasts for about ten minutes, and that in addition to this religious instruction is given once a week by the chaplain. He further states that under the trust deed

executed in 1874, it rests with the trustees of the school to prescribe what form of prayer shall be used at the opening of the school and what portions of scripture may or may not be read at such service and in case of complaint to prescribe generally the course of religious instruction and to fix the time that shall be allotted to such instruction. In these circumstances the Collector considers that, if the chaplain thinks that there is not sufficient compliance with the terms of the deed, he should state what his opinion and wishes are and then it will rest with the trustees to prescribe generally the course of religious instruction to be given and the time to be allotted for it. He also considers the action of the church committee to be somewhat precipitate and contrary to the broad views of the same committee in 1873.

5. If the property is resumed by the church committee, the Brecks' Memorial school will lose its only endowment and will have to solely depend on fees and grants. It behoves the trustees, therefore, not to relinquish the property for the mere asking.

T. KANAKASUNDARAM PILLAI.

30-10-01.

It is submitted that the mere reading of a chapter of the Bible for 10 minutes is not imparting religious instruction and that there is therefore no doubt the terms of the trust have not hitherto been carried out. On the other hand there is apparently no reason why the trustees should not be given a chance to carry out these terms. The fifth condition on which the transfer was made and which is given in paragraph 1 *supra* seems, however, to be absolute and there is nothing in it requiring the church committee to give any such chance. It is not therefore clear how Government can interfere in the matter.

If the Brecks' school loses the income from the property it will probably collapse, but as a school for European children it is not wanted, and as one for native and East Indian children it need not be conducted on such expensive scale.

P. T. THARYAN.

31-10-01.

Secretary—

The last note is quite correct. Government have nothing to do with it, and cannot, I submit, interfere. It rested with the church committee to give the trustees a "chance," but they decided not to do so. They were probably wise in terminating the arrangement. That there was a breach of the condition does not admit of argument: if the condition had been that there should be daily instruction in Greek, would the trustees contend that it had been satisfied by the reading out of twenty lines of the Iliad every morning and a short lesson once a week? The trustees have themselves to thank for what has happened.

A. T. PRINGLE.

1-11-01.

H.M.—

Government cannot interfere in the matter and no more need be said.

I would, however, remark that the church committee have not been so precipitate as Mr. Mullaly makes out. During the two years I was member of the Brecks' school committee, the chaplains (Messrs. Crowther and Malden) both complained that there was no religious instruction imparted except during the chaplain's weekly visit. The chaplain said he could not attend oftener and the trustees could not arrange for any real daily religious instruction by the masters or by any one else. An effort to do so probably would have been made had there been any chance of the Brecks' school being continued on the ambitious lines contemplated some few years back. The school has latterly steadily deteriorated, and I imagine the majority of the trustees have hardly thought it worth an effort to save this endowment which the church committee want for the parish school.

C. J. WIER.

2-11-01.

This seems a very poor business indeed. I will speak about it to-morrow at the fort.

J. T[OMSON].

4-11-01.

Please examine the record carefully to see if Government at the present day has any rights in or responsibilities regarding this school and its endowment.

J. T[OMSON].

5-11-01.

The Government sympathised with the efforts of the committee of the Brecks' memorial fund to establish a school of the kind and treated the school exceptionally in the matter of grants—*vide* G.O., No. 130, Educational, dated 20th April 1874. But it does not appear that Government ever had or now has any rights in or responsibility regarding the school. Please see also G.O., No. 452, Educational, dated 1st December 1877. As regards the endowment, the trustees now own a building worth

* Please see page 4 of the note at V.

about Rs. 40,000, of which no less than

Rs. 33,000 * were contributed by Govern-

ment from time to time. The property is, however, trust property and Government has no rights in it. So long as the trustees are Government servants, Government may have a moral responsibility to see that the intentions of the original subscribers are carried out, but there does not appear to be anything beyond this.

P. T. THARYAN.

7-11-01.

If X gives without conditions twenty thousand pounds to a charitable institution in trust, the gift would not make X a trustee. As regards the school, the Governor in Council is, I apprehend, in the position of X, and can have nothing in the shape of rights; on the other hand the trustees have the rights and responsibilities which ordinarily attach to trustees. I do not know anything about "moral responsibility," and fancy that a Government would not be well advised if interference with trusts were to be founded on the doctrine that such responsibility existed whenever public servants were trustees. The trustees of this institution are subject to the law, and that is probably enough.

2. I can find nothing in the previous papers and nothing in the Indian Statute book

* Tudor's Law of Charitable Trusts (1871).

or in the only work * about English trusts

which we have in the library, to lead to

the idea that the Governor in Council has any legal "rights in or responsibility regarding" the Brecks' Memorial school and its endowment. Of course he may (as he has done in the past) take an interest in an executive way in the institution, and may unofficially exert as much influence over, or pressure upon, individual trustees as he may please. And if he were to interfere directly with the conduct of the trust, it is probable that nothing would come of it, for the trustees being Government servants would not like to act in opposition to the wishes of the Governor in Council. But this would not alter the legal position.

3. In the present case, however, there is no question of the interference of Government with the Brecks' Memorial school trust; it is the church committee that is acting, and that committee holds for the Anglican Church the properties which it wishes, in view of the undoubted breach of the conditions of the deed of 13th January 1873, to resume. Short of declaring that those properties are vested in the Governor in Council there is no way that I can see in which the Government can prevent the resumption, and such a declaration would not only, it is submitted, be contrary to public policy but also be invalid without legislation.

4. If the views stated above do not commend themselves to Secretary and Honourable Member and if it is desired that Government should in some way interfere, it is thought that the opinion of the law officers should be obtained before any orders are passed.

Otherwise the present current may be disposed of by an order stating that the Governor in Council is unable to interfere and that if no mutual agreement for continuing the present arrangements can be arrived at between the trustees and the church committee, the former must act as they may think fit or may be advised.

A. T. PRINGLE.

13-11-01.

I think it is clear that Government cannot interfere in the matter in any legal way. It can bring pressure of course to bear on the official trustees to make them resist the demand of the Church Committee, but the latter body are certain, if this is done, to go into Court, and I have no doubt they could make out their case, viz., that the condition regarding religious instruction had not been carried out in full integrity. It is to be presumed the Bishop satisfied himself that the religious instruction given was meagre and unsatisfactory before he sanctioned steps being taken to resume the grant.

C. J. WEIR.

2. The chaplains certainly had complained before of this to the trustees. The latter, so far as I recollect, found it difficult to remedy matters as it was hard to get any master really qualified to give religious instruction.

3. The Breek's school with its salary grant of Rs. 2,400 and Rs. 600 from the municipality will probably be able to get on as a lower secondary school on the

Church Committee intend, I understand, devoting the rent of the building they resume to their parish school.

4. Considering the source of the original grant and the condition attached to it I do not think Government should go out of its way to attempt to prevent this.

C. J. WEIR.
20-11-01.

Very well. My wish was to make certain on the record that Government was not bound legally, morally or bothwise to stop the ruin of an institution so long under its aegis.

2. I must say at the same time that I cannot understand trustees who were unable to find a master fit to give "religious instruction" sufficient to put the question of compliance with the terms of the trust-deed beyond cavil.

J. T[HOMSON].
22-11-01.

The draft placed below may issue.

P. T. THARYAN.
23-11-01.

A. T. PRINGLE.
26-11-01.
C. J. WEIR.
26-11-01.

READ AGAIN G.O., No., dated 190

190

READ ALSO :—

READ ALSO:—
C. No. 1318, From the Colln of the Nilgiris, No. 1517, dated 2nd September 1901

ORDER No 689, dated 27.11.1901

The Governor in Council is
unable to interfere in the matter.
/ From orders /

87
 23/11/11
 87
 26-11-07
 26-11-07

To the Coll^y of the Nilgiris with deed.

First copy Sent to Press.

Returned for signature.

Despatched in print.

AD AGAIN G.O., No.
180

DATED

PRESENT No.

ENCLOSURE TO G.No.

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

NOTES NOT FILED UP, BEING MEANT FOR DISPATCH
IN ORIGINAL.

D.B.—

- A = Print in full.
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Order complete with Letter.

40 8

*Print with notes
of the draft deed of
transfer. The letter
is an enclosure to the
current. Show proof*

27-11-09

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