M.R.O. 1—39,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT

G.O. No. 1710 Press ~~Mis.~~ 22-23

Dated 23-12-1924

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, for the month of December 1859.

No. 22. Read the following letter from R. B. CHAPMAN, Esq., Under Secretary to the Government of India; to the Secretary to the Government of Fort Saint George, dated Fort William, 6th December 1859, No. 2418.

Home Department.

In continuation of my letters Nos. 2095 and 2331, dated respectively the 7th October last and 22nd ultimo, relating to the office of Kazee, I am directed to transmit the accompanying copy of a letter No. 6703, dated the 23rd ultimo, from the Officiating Secretary to the Government of Bengal, and to request that it may be laid before the Right Honorable the Governor in Council, together with the requisition from this Government, for his opinion on the subject.

From E. H. LUSHINGTON, Esq., Officiating Secretary to the Government of Bengal; to the Secretary to the Government of India, Home Department, dated Fort William, 23rd November 1859, No. 6703.

Judicial.

In reply to your letter No. 2049, dated the 7th October last, (received in this Office on the 17th idem,) I am desired to solicit a reference being made to my letter No. 6063 of the 18th October, which contained the opinion of the Lieutenant Governor on the propositions for the discontinuance of the allowances of Kauzees, and the repeal of all Laws which can be construed into a public recognition of those Officers.

2. Since that letter was despatched on the 28th October, the Lieutenant-Governor has received from a learned Mahomedan gentleman, the following precise statement of what constitutes a Mahomedan marriage, and of what occurs on the occasion of one, from which it will be seen that the Lieutenant-Governor was correct in saying that there is nothing of the nature of a religious ceremony in a Mahomedan marriage, and that the business of a Kauzee, in connection with such marriages, does not partake in even the least degree, of a religious character.

"The only persons whose presence is required by the Mahomedan Law to perform a marriage, are the bridegroom, the bride's deputy or agent, two male witnesses and the Kauzee or any other learned person.

"On the bride's agent coming to the place where the bridegroom and the Kauzee are sitting, he is asked by the Kauzee, who he is; and says in answer, that he has been deputed by the bride A the daughter of B, to give her in marriage to the bridegroom C the son of D, for a dowry of such an amount.

"The Kauzee then asks him, if he has any witnesses to what he has said.

"In reply, the agent says that he has been deputed by the said bride for the above purpose, in the presence of E the son of F, and G the son of H, who are his witnesses; and introduces them to the Kauzee. The Kauzee then asks the witnesses one by one, what they know of the matter; and they reply, by stating without an oath, that the bride A daughter of B, has deputed the agent I the son of J, *in their presence*, to give her in marriage to the bridegroom C the son of D, for a dowry of such an amount. The Kauzee then dictates to the agent and the latter accordingly repeats the following words addressing the bridegroom:—

"I have given my *Mawukkelah* (*i. e.* she who has appointed me her agent) A the daughter of B, in marriage to thee for a dowry of such an amount. And the Kauzee makes the bridegroom repeat these words in reply: 'I have accepted.'

"This is all that is absolutely necessary to make the marriage a lawful one; but the address and reply are usually repeated three times by the agent and the bridegroom, under the dictation of the Kauzee as above-mentioned.

"After this, the Marriage Contract, which is generally written out beforehand, is signed by the bridegroom and by those present, who become witnesses to the deed.

"The Kauzee then goes away, taking his fee, and a memorandum of the marriage, which he records in his Register of Marriages."

3. It is not necessary, in order to the real validity of the marriage, that the person who puts the questions whereof the answers complete the marriage tie, should be a Kauzee; but it

is necessary, in order to the due record of the fact of the marriage having been contracted, that he should be a person empowered to keep, under proper legal obligations, a Register of the marriages contracted in his presence.

4. The Lieutenant-Governor is not aware what the "religious duties or ceremonies prescribed by the Mahomedan Law" mentioned in Regulation XXXIX of 1793, were, or were supposed to be. Such duties or ceremonies cannot form part of the proper business of a Kauzee, of which word the word "Judge" is the literal interpretation. In practice, the Lieutenant-Governor believes, no such duties or ceremonies are performed by Kauzees. Every learned Mahomedan, and a Kauzee especially, is expected to reverence his Law civil and religious and to induce others to do the like; but if any Kauzee performs religious duties, or ceremonies, he does so not in the capacity of Kauzee, but as any other person might do. The expression "celebrating marriages" used in the same Regulation is certainly inappropriate. The Kauzee in no sense performs the act of marriage. That is done by the parties to the contract, and may be equally well done without as with the presence of a Kauzee. The Lieutenant-Governor observes that in his first answer, which is already before the Government of India, he omitted to say expressly that he concurred in the propriety of repealing the Regulations relating to Kauzees. This was perhaps implied, but it was not distinctly expressed. This omission he begs now to repair, by stating that he considers the repeal very advisable.

13. But the repealing Act, he is of opinion, should constitute the Office on a proper footing as that of a Mahomedan Marriage Registrar. The Lieutenant-Governor has ascertained that divorces are not effected in the Kauzee's presence; but agreements by married women to forego dower, when a married pair desire divorce, are for the security of the husband made in presence of the Kauzee. It would be right, the Lieutenant-Governor thinks, to leave to the Kauzee the registration, not only of marriages, but also of marriage deeds and of deeds renouncing claims under marriage deeds. In all other respects the plan of the Law of Mahomedan Marriage Registrars might, the Lieutenant-Governor believes, conform in all essentials to the Law of Christian Marriage Registrars. It was no more than an act of bare justice to enable Dissenters, if they chose, to marry by Civil contract made in the presence of a Marriage Registrar, who, in India, must be a Christian; and to create the new Office of Christian Marriage Registrar for that purpose, and for the purpose of making a legal record of such marriages. Mahomedans have by Law the power of marrying by Civil contract; and an Office which must be held by a Mahomedan has been created for the legal record of their marriages. It would not be, in the Lieutenant-Governor's opinion, a just or decorous act, substantially to abolish that Office.

No. 23. ORDER THEREON, 23rd December 1859, No. 1710.

Communicated to the Judges of the Sadr 'Adálat with reference to Proceedings, 1st instant, No. 1620.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

22-4-23

Lett. 22-4-23

No. 1710 – 23rd Dec.r 1859.
Communicated to the Judges of the Sadr Adalat with reference to Proceedings, 1st Inst. No. 1620

The Judges of the Sadr Adalat

No. 2418

From

R. B. CHAPMAN, Esquire,

Under Secy. to the Govt. of India,

To

The Secretary to the Govt. of Fort St. George

Sir,

Dated Fort William, the 6th December 1859.

Home Dept. In continuation of my letters Nos. 2095 & 2331, dated respectively the 7th October last and 22nd ultimo, relating to the office of Kazee, I am directed to transmit the accompanying copy of a letter No. 6703, dated the 23rd ultimo, from the Officiating Secretary to the Government of Bengal, and to request that it may be laid before the Right Hon'ble the Governor in Council, together with the requisition from this Government, for his opinion on the subject.

I have the honor to be,
Sir,
Your most obedient servant,

R. B. Chapman

Under Secy. to the Govt. of India.

Exd.—M. A. Mendes.

Exd. F. Cartledge.