M.R.O. 1—39,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 68-69	395	Press ~~Mis.~~
Dated	31-3-	19 18

Not to be folded or roughly handled

5/4/23

No. 68. Read the following letter from W. GREY, Esq., Secretary to the Government of India, to J. D. BOURDILLON, Esq., Secretary to the Government of Fort Saint George, dated Fort William, 10th March 1860, No. 524.

Home Department, Judicial.

I have the honor to transmit the accompanying copy of a correspondence,* relative to a Bill introduced by Sir Charles Jackson, for the dissolution of marriages of Christian converts, and I am desired to request that with the permission of His Excellency the Governor in Council, a report may be furnished upon the extent to which such converts in the Madras Presidency are actually affected by the existing state of the law, and upon the expediency of altering the law.

* *Letter from Sir Charles Jackson, to the Right Honorable the Governor General, dated 1st February* 1860, *and enclosure.*
Letter from Secretary with Governor General, to Sir Charles Jackson, Kt., No. 54, dated 13th February 1860.

From Honorable Sir C. R. M. JACKSON, Kt., to the Right Honorable the Earl CANNING, dated Calcutta, the 1st February 1860.

I postponed on Saturday last my Christian Converts' Bill, which was one of the orders of the day, having heard from Sir Bartle Frere, that you did not wish any further action on it until you had an opportunity of seeing and considering its provisions.

I now send you a copy of the Bill, with the objects and reasons, and also the official report of my speech when I introduced the measure. If you do me the favor of reading these, you will be in possession of my views on the subject.

I also send you an extract from an opinion given by Sir James Colvile, when Advocate General, which first suggested the present Bill.

The question having been brought before our present Bishop, shortly after his arrival in this country, he applied to Sir James Colvile, to propose such a measure as suggested in his opinion to the Legislative Council, but Sir James, being then about to leave the country, requested me to undertake the task, which I promised to do as soon as I was relieved from the duties of Acting Chief Justice.

I am aware that the Bill raises many very difficult questions, and I do not feel at all confident that I shall carry it through the Council. But I do not think that there is anything in it which can be construed as either an attack on the Hindoo or Mahomedan religion, or the prejudices of the Professors of those creeds. It cannot be gravely contended that any Hindoo or Mahomedan would turn Christian, and lose caste with the view of getting rid of his wife under this Act, when if a Hindoo he could supersede her and take another wife, or if a Mahomedan he could divorce her with a curse. And as to wives turning Christians to get rid of their husbands, the only wives who can be got at by Missionaries, and converted without the consent of their husbands, are children who certainly do not become converts, with the view of getting rid of their husbands.

There is some doubt entertained whether the loss of caste occasioned by conversion operates as a dissolution of the marriage according to Hindoo law, and it is therefore contended that this Bill does therefore to some extent alter that law. I think that loss of caste does dissolve the marriage, but whether I am right or wrong it is clear that loss of caste renders a refusal to co-habit with a convert, a lawful proceeding on the part of the unconverted party, and operates practically as a divorce. Others I believe object that the Bill operates so as to separate man and wife ; but in fact the effect of the Bill will be to unite, not to separate. At present when a man is converted, he practically loses his wife. My Bill provides for their being brought together, and their real wishes ascertained and (except in the case of repeated refusal to co-habit) puts a period to the separation.

I shall be glad to hear that you see no objection to the further discussion of the measure.

Copy of an Opinion given by Sir JAMES COLVILE.

"I think therefore that although you may be perfectly satisfied there are no *spiritual* objections to licensing a second marriage in the case before me, you will agree with me, that nothing short of Legislative interference can satisfactorily meet the difficulty, and for my own part I cannot see why the Legislative Council should not interfere. We want no doubt a general Marriage Act for India. It has been supposed by high authority that the task of framing one belongs more properly to the Imperial Parliament than the local Legislature.

"The reasons assigned for this may be true as regards the marriages of Europeans, it has no application to those of Natives; the latter and all the considerations relating to them, their peculiar incidents and their consequences, are obviously Indian, and this one case of hardship seems sufficient ground for passing a law, which in a few sentences might provide that a Native convert, male or female, should, on the solemn refusal of his or her, wife or husband, to co-habit with him or her, be declared by the Bishop, or in the case of Non-Episcopal Commission, by some other spiritual authority; or in all cases if it be preferred by the Civil Magistrate, competent to contract a second marriage, subject to such provisions as may be thought just and in accordance with Hindoo laws and usages with respect to the maintenance of a former wife."

From C. BEADON, Esq., Secretary to the Government of India, with the Governor General, to the Honorable Sir C. M. JACKSON, Kt., Member of the Legislative Council, dated Camp Lahore, 13th February 1860, No. 54.

The Governor General has desired me to acknowledge the receipt of your letter, dated the 1st instant, accompanied by a copy of the "Bill to provide for the dissolution of certain marriages entered into by Christian converts before their conversion," with the objects and reasons thereof, the official report of your speech on moving the first reading of the Bill in the Legislative Council, and an opinion by Sir James Colvile on the subject of the Bill.

2. The desire expressed by the Governor General, and communicated to you by the Honorable Sir H. B. Frere, that the Bill should not at present be proceeded with, was founded not so much upon any specific objection to its provisions, though in this respect, His Excellency's mind was not free from doubt, as upon a general conviction that questions of the kind so nearly touching the religious usages and feelings of Her Majesty's Native subjects cannot be expediently brought forward in the Legislative Council, until they have been fully considered by the Supreme Executive Government, after consultation with the local responsible authorities in all parts of India.

3. However unobjectionable and even salutary a measure of this sort may be, the motives of the Government in bringing it forward are very apt to be misunderstood and misrepresented. To the Native mind, it is inconceivable that a measure introduced into the Legislative Council is not introduced by the Government or at any rate with its sanction; and the mischief which may be caused by the premature discussion of such questions is beyond calculation.

4. One important element in every question of Legislative action is the number of persons to be affected by it. It is conceivable that a measure designed for the relief of a few persons may be perfectly just and right as regards those persons, and may yet be highly inexpedient with reference to the general sense of the community. In the present instance it does not appear to what extent the law as it stands has led to any serious practical inconvenience which the proposed change would remove, or how far a change in the law is desired by any considerable number of those whom it concerns. These are questions which need to be resolved by enquiry. So far as His Excellency knows, no means of forming a judgment upon them have been brought to the notice of the Government, either by the local authorities, or by the Bishop or any of the Clergy who have consented to the proposed Bill.

5. The Governor General, however, will gladly avail himself of the opportunity afforded by your communication to direct that enquiry be made as to the extent to which Christian Converts are affected by the existing state of the law, and as to the expediency of altering it. With this view the President in Council will be immediately addressed. In the meantime His

Proceedings of the Madras Government, Judicial Department, for the month of March 1860.

Excellency trusts that the Bill will not be proceeded with until the Supreme Government is in possession of full information on the subject, and in a position to form an opinion whether legislation is advisable, and if so, what form it should take.

(True Copy.)

(Signed) W. GREY,
Secy. to the Govt. of India.

No. 69. ORDER THEREON, 31st March 1860, No. 395.

Resolved that a copy of the above letter and of its enclosure be forwarded to the Government Pleader, and that he be requested to report upon the extent to which Converts in the Madras Presidency are affected by the existing state of the Law respecting marriages.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Secret.

I beg to circulate these papers for perusal –

It may perhaps be considered at my Council to whom reference should be made to ascertain the present state of the law and the expediency of any change.

J.P.

23/3/60

FROM

No. 524

W. GREY, ESQUIRE,
Secy. to the Govt. of India,

TO

J. D. Bourdillon Esqre
Secretary to the Government of Fort St. George

SIR,

Dated Fort William the 10th March 1860.

HOME DEPT. Judicial.

I HAVE the honor to transmit the accompanying copy of a correspondence,* relative to a Bill introduced by Sir Charles Jackson, for the dissolution of marriages of Christian converts, and I am desired to request that *with the permission of His Excellency the Governor in Council* a report may be furnished upon the extent to which such converts in the *Madras Presidency* are actually affected by the existing state of the law, and upon the expediency of altering the law.

* Letter from Sir Charles Jackson, to the Right Hon'ble the Governor General, dated 1st February 1860, and enclosure.
Letter from Secretary with Governor General, to Sir Charles Jackson, Kt., No. 54, dated 13th February 1860.

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

W. Grey
Secy. to the Govt. of India.

Exd.—H. C. Mittra.

Lit
Consid 30/3/60

Order thereon 31st March 1860, No 395—
Resolved that a copy of the above
letter and of its enclosure be forwd
to the Madras Govt, and that they be
requested to report upon the extent

Judicial 1860 Depart.

31 March

From

The Secy. to the Govt. of

India No. 524

1370.
1684.

d/ 10th } March 1860.
d/ 23rd }

No. 471

1 Encl.
88 Paras
Copies

J.B. No. 987 - Mis. No. 380 -
1208 - mis.

Transmits copy of a correspondence relative to a Bill, introduced by Sir Charles Jackson for the dissolution of marriages of Christian Converts, and requests that a report may be furnished upon the extent to which such converts in this Presy. are actually affected by the Existing State of the law, and upon the expediency of altering the law.

Write

Order.

& which Converts in the Madras Presidency are affected by the existing State of the law respecting marriages.

Govt. Plan. Desp. 5.

6889

C 28 March
R 27 "