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G.O., &c., Nos. 183, 184, 13th February 1899.

FEBRUARY.

Bills—Legislative.

Furnishing the Government of India with the opinion of this Government on the Bill to amend Act XX of 1863 (Religious Endowments) which the Hon'ble Rai Bahadur Ananda Charlu has introduced into the Supreme Legislative Council.

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

READ—the following paper:—

From the Registrar of the High Court of Judicature, Madras, to the Chief Secretary to Government, dated 16th August 1897, Dis. No. 1392.

With reference to G.O., No 501, Public, dated 3rd May 1897, communicating for the opinion of the Honourable the Judges, a Bill to amend Act XX of 1863 (an Act to enable the Government to divest itself of the management of religious endowments), I am directed to forward copies of the minutes recorded by the Honourable Justices Shephard, Subramania Aiyar, Davies, Benson and Boddam and to state that the Honourable the Chief Justice has no remarks to offer on the Bill.

(Signed) D. W. G. COWIE,
Registrar.

ENCLOSURE.

Minutes.

THE HON'BLE MR. JUSTICE SHEPHARD.—The principal defects in the Act, XX of 1863, are set forth in the report of the committee presided over by the late Sir T. Muttuswami Aiyar and a convenient summary of them under seven heads is given in Mr. Butterworth's letter of the 26th May 1894. Rai Bahadur Ananda Charlu's draft Bill purports to deal with some only of the points indicated in this summary. According to the Statement of Objects and Reasons, the Bill is designed to abolish the distinction between the two classes of religious institutions mentioned in the 3rd and 4th sections of the existing Act. It is proposed that the tenure of office by members of the committee should no longer be for life as under the existing Act but for a term of years, and by way of furnishing a check upon the local committee the framer of the Bill returns to the plan of instituting a central committee to exercise general supervision over the acts of the local committees. In the view which I take of the legislation which is required by the necessities of the case, it would be useless for me to consider how far Mr. Ananda Charlu has in his draft Bill succeeded in giving effect to the proposals which he makes. Nothing can be gained by criticising a Bill in which no provision is made for material points on which legislation is required.

The defects of the present system may be summed up by saying that the law omits to give the committees either the power or the means to exercise an effective control over temple trustees and further leaves the committees themselves uncontrolled by any superior authority. No amendment of the existing Act can in my opinion be of any practical value, unless it deals with these three defects. I do not think that Mr. Ananda Charlu's Bill can be said to give the committees either the power or the means, in the shape of command of funds, which, as he himself admits in his speech on the introduction of the Bill, the committees require for the proper discharge of their duties. He has refrained, apparently against his own better judgment, from giving the committees power of their own motion to dismiss or suspend recalcitrant or fraudulent trustees. He has made no provision for furnishing the committees with funds to conduct litigation against such trustees. It is true that in his proposed central committee he would bring into existence a body charged with the duty of supervising the acts of the local committees. But he has left the proposed central committee equally destitute of the power and the means to discharge its duties; and assuming it to be otherwise, I can see no reason to suppose that the proposed central

committee would be in any respect more zealous or active than the existing committees have hitherto been. The Government of India observes in Mr. Hewett's letter of the 7th September 1894 that they are not satisfied that there is anything to show that "given the necessary public spirit to put" the machinery of the existing law in motion, the present law cannot be effectively enforced against peccant Mahants or Sebaitis. Given the necessary public spirit, and assuming that by that phrase is connoted a capacity for the independent management of public affairs, I fully agree that the present Act might easily be so amended as to afford adequate protection to the religious institutions of the Presidency. But it is just the want of this public spirit, the absence of persons among those interested in the religious institutions of the country, resolved without fear or favour to see that the affairs of those institutions are honestly and properly administered, that has brought things to their present pass and justified the strong observations of the Board of Revenue adopted in the report of Sir T. Muttuswami Aiyar's committee (see paragraph 5 of report). There appears to me to be no reason for wonder that the experiment in self-government which was introduced by the passing of the Act of 1863 has resulted disastrously. In the management of such affairs as come within the cognizance of municipal councils and local Boards the Government would never venture to leave the business to the independent, uncontrolled charge of men chosen by popular election and acting gratuitously. If as regards those affairs the control and stimulus of official authority were withdrawn, there is little doubt that the administration of them would come to a standstill. And it is difficult to understand why any better results should be expected in the case of the affairs of religious institutions. I gather from the observations made in the fifth paragraph of Mr. Hewett's letter, especially when read along with Mr. Howell's letter of the 29th February 1876 that the Government of India might be induced to take a different attitude towards the question under discussion, if only the clearly expressed wish of the Hindu community were found to justify it. There may be some hope in this quarter; but otherwise and unless the Government of India are prepared to consent to some such scheme as was apparently approved in 1876, I fail to see how the religious institutions of the country and their endowment can escape the fate which has been predicted for them.

THE HON'BLE MR. JUSTICE SUBRAMANIYA AIYAR.—That great mismanagement and speculation exist in the case of the immense endowments attached to many of the public religious institutions in this Presidency is undeniable. Disinterested persons possessing abundant means of forming a correct opinion on the point have again and again testified to the unsatisfactory state of the affairs in question. Judges of the High Court as well as *moffussil* Judges, Members of the Board of Revenue as well as District officers have written much on the subject as the bulky volume of papers that lies before me shows. And the local Government has more than once admitted that the people of this Presidency have a grievance in the matter which loudly calls for a proper remedy and has suggested remedies. Notwithstanding these wellmeant efforts on the part of the authorities here, nothing has been done to redress the grievances complained of, for the simple reason, so far as I can judge, that a different view of the matter has for some time past been taken in influential quarters elsewhere. That view seems to be that Act XX of 1863 affords all the legal protection required for compelling trustees, &c., to discharge their duties honestly and properly. But it seems to me that that view cannot be really maintained.

It is impossible to doubt that Act XX is in several material respects defective. For my present purpose it is sufficient to point out a couple of such defects. Now the only practical means possessed by local committees for enforcing their lawful orders to trustees subject to their control is a suit in court. But the committees are unable to carry on any such suit, for the best of all reasons, viz., they have no funds for carrying on the litigation. Even those who are strongly opposed to any further legislation with reference to religious institutions in this country are, I believe, compelled to admit that the Act is defective in the above-mentioned particular. The amendment of the law in that respect at least seems therefore imperative. Nor is that the only important change required now. When local committees constituted under the Act became the *final* executive supervisors of the administration of religious charities subject to their control, it is clear that for a high-class central authority, consisting of

men of unquestionable probity and ability as the Members of the Board of Revenue, there was the substitution of comparatively insignificant scattered bodies consisting generally of men with far less character and capacity and over whom there was no check save what was available by way of proceedings in court. A change like this was bound to prove a failure and it has. Again there is the case of trustees not subject to the jurisdiction of local committees. It is quite unreasonable to expect that in dealing with the very large incomes derived from endowments belonging to the institutions under their charge these trustees would be ever faithful and true in the absence of some authority empowered to scrutinise their management from time to time. The result of the absence of all such supervision since 1863 has been the frequent occurrence of scandalous breaches of trust of which the gigantic fraud perpetrated by the late Tirupati Mahant was but a conspicuous instance.

It seems therefore absolutely essential that the law should authorize the formation of one or more central committees with powers similar to those vested in the Board of Revenue under Regulation VII of 1817. That the trustees as well as local committees should be placed under such a central authority, so that it could periodically look into their proceedings, take notice of complaints against them and exercise other supervising functions seems but fair and reasonable. I do not see how this can be doubted for a moment. Take for instance the administration of municipal or local funds. Could anybody acquainted with the country honestly say that if municipal councils and local boards were left entirely to themselves (as the trustees, &c., in question practically are) their business would not very soon get into utter confusion and mismanagement? And is there not every reason for holding that the trustees and committees require similar, if not even stricter, supervision and control? One important point for decision as to the central committee or committees would be with reference to the mode of choosing and appointing persons to sit on such committees. I am decidedly of opinion that their appointment should not be by election. Perhaps it would be inexpedient to call upon the local Government to undertake the duty of appointing fit and proper persons to serve on the central committee or committees. But there can be no objection to the task being entrusted to the High Court. For the judges are not executive officers and are the recognised representatives of the sovereign power with reference to all charities—religious charities included. The power which I propose to entrust to them is very analogous to what courts are called upon to exercise in certain suits relating to public charities under the Code of Civil Procedure. The only other observation I wish to make in connection with the constitution of the central committee or committees is that the members must receive a fair salary. Without a central committee or committees composed of capable and good men selected and appointed by an independent authority like the High Court and adequately remunerated, I do not expect any material improvement could be effected in the administration of the charities in question.

These are my views on the two points which, in my opinion, are of paramount importance among those connected with the subject. And I would only add a few words as to a matter which appears to be strongly in the way of the people securing the necessary changes in the law. I refer to the impression in the minds of the authorities in Calcutta that the agitation for the enactment of a better law than Act XX proceeds from a small clique consisting of persons who have come under the influence of foreign notions and who are in truth not very friendly to the religious institutions in question, while the large majority of the people interested are opposed to the demand for such legislation. I feel it my duty emphatically to say that that impression is altogether wrong and that the general public here, unaffected by foreign ideas, are most desirous that a proper enactment should be passed and the management of their great public religious charities better provided for. The hesitation of the authorities in Calcutta to allow Act XX to be amended is not known to the masses to be due to the anxiety of Government not to interfere unnecessarily with the religious concerns of the people, but is ignorantly attributed by them to be due to the supposed indifference of Government to the well being of non-Christian institutions like the temples. Consequently a change of policy on the part of the Government of India in the present matter will be welcomed by the people of this Presidency in general.

I should observe however that the legislation required should, so far as this Presidency is concerned, take place in the local Legislative Council. Though no doubt the subject of the management of public religious charities is in the main common to all the provinces, yet there can be little doubt that the special features connected with the temples situated in this Presidency could be dealt with more conveniently in Madras than in Calcutta. And provisions required with reference to those institutions may not be considered necessary or suitable in the case of institutions in other provinces. I would therefore recommend that the task of amending Act XX for Madras be left to the local Government with the intimation that the Government of India does not oppose the formation of a central committee or committees composing of not more than three members on the lines indicated above. I know for a fact that several non-official members of the Madras council are ready and willing to introduce a Bill which, while strictly adhering to the principle of non-intervention on the part of the executive officers of Government, would be best suited to the wants of the Presidency, if only they are permitted to do so. And the mass of information collected and recorded by the three committees appointed by the Government to enquire into and report upon the working of Act XX in this province throws light upon almost every aspect of the matter in question and would enable the members of the Madras council to pass a law that would give satisfaction to the communities concerned.

Such being my opinion, I refrain from considering and discussing the provisions of the Hon'ble Mr. Ananda Charlu's Bill.

THE HON'BLE MR. JUSTICE DAVIES.—The scheme of the Bill is in my opinion quite unworkable. But if otherwise, I fear there would be the same strife and consequent deadlock among the committees proposed to be formed as among those already existing. What is really needed is some authoritative control.

THE HON'BLE MR. JUSTICE BENSON.—I do not think that the scheme embodied in this Bill is practicable or desirable.

2. The "district electorate" elects the "district committee" and the latter elects the "central committee" for each religion or sect. These committees hold office for three years and have "absolute control" over all the non-Christian religious and charitable institutions of the religion or sect to which the committees belong. It is evident, then, that the scheme depends for its success on the character and capacity of the "district electorate." The qualifications of this electorate are not, however, defined further than that the electors are in the first instance to be the "leading persons" of the religion or sect, "including the principal land-holders, pandits, moulvies and priests and all such men of respectability and position as in the opinion of the committee (referred to in section 3) ought to be included." This electorate is subject to revision by the central committee every third year just before the committee vacates office. The Bill provides no rules for the guidance of the central committee in making this revision. Even though it may profess to adopt the vague qualifications prescribed in section 3 for the first electorate, it is clear that this central committee can, in reality, include in, or exclude from, the list any person whom it chooses, and there is no appeal, either to the courts or any other authority, against its decision. Thus a small committee, of not more than five men, at the headquarters of each province is to nominate practically, at discretion, the electorate on whose votes its own re-election depends; and this, just before its members vacate office and present themselves for re-election. It is difficult to imagine a scheme, which under the guise of popular representation, would be more certain to lead to intrigue and corruption and all the worst evils of the caucus. It is much the same as if the members of the English cabinet before each general election were to nominate the electors in each constituency in the United Kingdom. The fact that the "district electorate" does not directly elect the central committee will be no protection, for the central committee cannot possibly know the "district electorate" throughout the province. The central committee will in practice rely on lists sent to it by the district committees, and (human nature being what it is) the latter will assuredly take care that the lists are those of electors who will re-elect the district committees who nominated them.

3. Again, the scope of the Bill is, I think, too wide. It applies to all charitable and religious institutions of a public character, however small. There are thousands of petty shrines and village temples throughout the country with which no one has any concern save the villagers or a small fraction of the villagers concerned. The villagers appoint the pujaries, or officiating priests and exercise such simple control as is necessary over the institution. I doubt if a district, and still more a central, committee should have any control over these petty institutions. They could hardly exercise it with advantage, and I greatly doubt if the village people would appreciate the interference and rules, however well meant, of such bodies. I think that all such petty institutions should be excluded from the operation of the Bill.

4. I think, too, that the power of "absolute control" given to the central committee is too wide. They are, apparently, not even bound to act in accordance with the wishes of the founders of the institutions, or to consult the advantage, wishes or convenience of those for whose benefit the institution exists, and their action is, apparently, to be uncontrolled even by the courts.

5. Lastly, I think there will be great difficulty in deciding what is meant by "religion or sect." There is to be a separate "district electorate," district committee and central committee for each "religion or sect." Who, I should like to know, can enumerate all the "sects" which exist even in this Presidency, or can say to what "sect" many of the Hindu temples belong? I suppose the Sivites and the Vishnuvites are different "sects", yet many temples have shrines to both Siva and Vishnu.

I suppose, too, that the Tenglais and Vadagalais are different sects, yet in many great temples both these sects have an equal, or almost equal, interest. Which are the district and central committees that are to control such institutions? The Bill apparently makes no provision for such cases.

6. It would be easy to multiply instances of the difficulties with which the scheme of the Bill is surrounded, but what I have said is, perhaps, enough to show that the Bill will require a great deal of recasting and definition before it can be accepted as affording even a basis for that closer discussion which a measure of its importance ought to receive.

THE HON'BLE MR. JUSTICE BODDAM.—I think that this Bill in its present form is entirely impracticable.

No committee whether already formed or nominated as provided at the end of section 3 could satisfactorily "prepare a register and publish in all public offices and institutions a list of the leading persons of each religion or sect which has any institution in the district", &c., within a month. The whole object of the Act (the formation of a pure electorate) is stultified by leaving it to the committee to insert in the register "all such men of respectability and position as in the opinion of the committee ought to be included in this list."

A register so formed would be quite valueless and there is no means provided for rectifying it. For this purpose the last clause of the section is useless.

The Bill contains no provision for compelling the committee whether already formed, or nominated, to prepare a register.

The civil courts have no information or means of acquiring the information necessary to ascertain the various religions and sects in their districts nor who would be fit and proper persons to nominate to form a committee to prepare the lists. In no case could they do this satisfactorily within a month of the passing of the Act and if it is not done in that time there is no power to appoint a committee at all. Moreover, even if a committee were so appointed there is nothing to oblige them to prepare any register, nor however willing they might be is there any time given to them for this purpose for the register has to be prepared and published within a month of the passing of the Act.

The result is that there is nothing in the Act either to compel the formation of a district electorate or to insist that if formed it shall be a pure and complete electorate.

Without these the Bill is necessarily futile.

From the Government Solicitor, Madras, dated 17th August 1897, No. 473.

ABSTRACT.—Forwarding the following opinion of the Acting Advocate-General, dated 16th August 1897:—

[Re Bill to amend Act XX of 1863 (G.O., No. 501, Public, dated 3rd May 1897).]

I am decidedly of opinion that so far at any rate as the Presidency of Madras is concerned, a measure re-enacting Act XX of 1863 with amendments to supply its defects is absolutely necessary in order to secure a more efficient and honest management of religious endowments.

2. The present Act applies only to mosques, Hindu temples and other religious establishments. The Bill considerably widens the scope of the Act by making it applicable to all *non-Christian* religious and *charitable* institutions and endowments of a public character. If such extension was really intended by the framer of the Bill, its object is not explained either in the Statement of Objects and Reasons or in the speech of the Hon'ble Member while introducing the Bill. It is quite unnecessary, nay objectionable, to bring within the purview of the Act charitable endowments of a public character which are regulated by the Charitable Endowments Act VI of 1863 and choultries and similar charitable institutions which are dealt with by Madras Regulation VII of 1817 and other local Acts.

3. The Bill purports only to amend Act XX of 1863 and not to re-enact it with amendments. The only section of the Act which is expressly amended by the Bill is section 18. So far as the remaining sections of the Act are concerned, it is apparently left to be decided judicially, whenever occasion arises, what portions thereof are repealed by the Bill, if passed into law, by necessary implication, what portions thereof are not inconsistent with the Bill and therefore continue to be in force, and in what respects the other enactments relating to charitable endowments are affected by the Bill. Such an Amendment Act will cause much inconvenience and perplexity in practically working it. Considering that the Bill is nearly as long as the existing Act, the proper course would be to re-enact the existing Act with the necessary modifications and additions.

4. My remarks on the various provisions of the Bill will be confined only to Hindu temples and religious establishments.

5. Section 3.—The provisions of this section as to the formation of electorates are altogether impracticable and also proceed on a misconception of the nature of the committees constituted in each district under the present Act. In certain districts, there is a committee appointed in respect of each important temple, whether Sivite or Vishnuvite. In some districts, there is a committee appointed for each taluk in respect of all temples, whether Sivite or Vishnuvite, situate therein. In other districts, there is one committee for all the Vishnuvite temples in the district, and another committee for all the Sivite temples. Such being the case, it is difficult to see how the electorates are to be formed under section 3 by the existing committees in each district. The Bill contemplates the formation of electorates for each religion or sect. The formation of electorates, one for the Hindu religion and another for the Muhammadan religion, is of course quite proper and feasible. But it is quite undesirable and absolutely impracticable to form an electorate for each of the numerous sects or cults of the Hindu religion. The existing committee, the members of which have been appointed for life, cannot reasonably be expected to form electorates within a month after the passing of the Bill in view to their being displaced by members elected for a term of three years. No provision is made in the Bill for meeting the highly probable contingency of the existing committees failing to form the electorates within the prescribed period. While an attempt is made to define, in a general way, the qualifications of electors, no attempt is made to define the qualifications of the candidates to be elected, which are more essential than those of the electors. The Bill itself ought to define with precision the qualifications of the electors and those of the members of committees and of trustees, as well as their supervening disqualifications. This is done in a draft Bill submitted to Government with a report, dated May 1896, by a committee of native gentlemen appointed by Government for the purpose, of whom I was one.

6. *Section 5.*—This section provides for the formation of a central committee for each religion or sect throughout the province. If, as already observed, there are to be no committees in respect of each sect in every district so far as the Hindu religion is concerned, there will be but one central committee for the whole province. The formation of such a central board was recommended several years ago by Sir William Robinson's committee, but it did not meet with the approval of the Government of India. Such a central board will be very useful and exercise effective supervision and control over all district committees and indirectly upon all trustees of temples. Such a board cannot be constituted by election of its members but the members thereof should be nominated by the High Court and they should be adequately paid from the temple funds. The work devolving on the central board will be very onerous and responsible and tax the attention of each member for considerable time daily. The members of the district committees stand altogether on a different footing and they have to devote but a little time now and then to the affairs of the temples subject to their management and control, and they can therefore be expected to render such services without any remuneration.

7. *Section 7.*—There is a general consensus of opinion that members of committees should not be appointed for life, but that they should be appointed only for a term of years, they being of course eligible for re-election. The term of three years proposed in this section seems to me to be very short and it may well be raised to five years. In regard to trustees of temples, whose nomination rests solely with the committee and who under the present law are appointed for life, subject of course to removal for incapacity or misconduct, it is desirable that they also should be nominated for a term of five years; and if electorates are to be formed for appointing members of district committees, there is no reason why trustees of such temples should not also be appointed by election. The draft Bill last submitted by the Madras committee contains provisions for election once in five years of members of committees and trustees of temples, the nomination of whose trustees now rests solely with committees.

8. *Section 9.*—It is not clear whether it is intended by this section that no member of a central or district committee shall be liable to removal for misconduct by decree of court, but only by the unanimous vote of the remaining members. The jurisdiction of the court to remove a member for misconduct should not be barred, and I think that a committee will scarcely be found the members of which other than the member proposed to be removed for misconduct would be unanimous in passing a resolution for the removal of such member.

9. *Section 12.*—This section proposes to vest district committees with absolute control over religious and charitable institutions subject to its jurisdiction, the only limitation placed upon the exercise of such control being that it should not be inconsistent with the maintenance of such institutions. The absolute power proposed to be given to the district committees is dangerous and will meet with great opposition, and the proposed limitation on such power is vague, indefinite and can easily be evaded.

10. The latter part of the section provides that district committees shall not have the power of dismissal of trustees for misconduct except by a decree of court obtained in a suit instituted by such committee under section 18 of the existing Act as proposed to be amended by section 20 of the Bill (*vide* paragraph 8 of the Statement of Objects and Reasons). This provision will make committees even more powerless and place them in a worse position than they are at present in controlling recalcitrant trustees of temples. Under the existing law (*vide* section 7 of Act XX of 1863, and 3, Mad., H. C. R., p. 334), district committees can and do dismiss trustees for misconduct and appoint their successors. Though they have such power legally, they are powerless to eject the dismissed trustee from the management of the temple and its endowments except by a decree of court, if the dismissed trustee refuses to vacate his office and the trustee appointed in his stead is unable to obtain possession peaceably of the temple and its endowments. In such a suit which is brought sometimes by the committee itself, but generally by the newly-appointed trustee, the dismissed trustee as defendant challenges the validity of his dismissal on the ground

that he was not guilty of misconduct which would justify his dismissal. The trustee being liable to removal only for good and sufficient cause, the court has to decide judicially whether the committee was justified in dismissing the defendant from the office of trustee. It sometimes happens that the newly-appointed trustee is influential enough to obtain possession of the temple and its endowments by ejecting the dismissed trustee without any breach of the peace. In such cases, the dismissed trustee, if dissatisfied with the action of the committee, brings a suit as plaintiff to recover back possession of his office on the ground that he was not guilty of any misconduct which would justify his dismissal by the committee. But in the majority of cases, the order of dismissal is peaceably carried out and no suit is brought by either party. In some of the reported cases, the jurisdiction of the committee to dismiss a trustee was questioned not on the ground that the committee had no power to dismiss a trustee, but on the ground that the temple in question was not one subject to the jurisdiction of the committee and that it did not fall under section 3 of the existing Act. In view to strengthen the hands of the committee in cases in which a dismissed trustee is powerful enough to withhold possession of his office notwithstanding his dismissal by the committee, it is provided in the draft Bill of the Madras committee already referred to, that on application made by the district committee concerned to the district court, the judge may, if the order of dismissal discloses grounds *prima facie* sufficient for such dismissal of the trustee, order his summary ejection from the office without prejudice to the right of the dismissed trustee to bring a suit to be re-instated in office if his dismissal was really unjustifiable. Such amendment of the existing law is necessary in the interests of temples and their endowments, for a trustee who has been unquestionably guilty of gross misconduct and who has been justly dismissed by the committee not a day too early, can and often does manage to retain possession of his office, without the least control or check by the committee, for several years after his dismissal until the successful termination in appeal of a suit commenced by the committee or the new trustee as the case may be to eject him from his office, such suit having to be prosecuted in the first instance at any rate with the private funds of the newly-appointed trustee, but resisted and protracted throughout with the aid of the temple funds in the possession of the dismissed trustee.

11. *Sections 13 and 14.*—The provisions as to the preparation and revision of a budget of receipts and disbursements in respect of each temple by district committees and confirmation or revision of such budget by the central committee are wanting in legal precision, and will be found altogether unworkable in practice having regard to the fact that mostly receipts and in particular disbursements are not in money but in the shape of grains and other provisions. The district committees should be left to deal with the preparation and revision of budgets as an administrative matter and it should not be regulated by inflexible provisions of law.

12. *General remarks.*—The Bill in so far as it aims at abrogating the distinction which the existing Act makes between the two classes of temples described in sections 3 and 4, respectively, will meet with very great opposition. In most of the zemindaris in Southern India, there are numerous temples founded and endowed by former zemindars, which are maintained not only out of the income derived from their special endowments but also to a considerable extent from the general revenues of the zemindaris and the private resources of the zemindars. The sole trusteeship is hereditary in the zemindar's family and devolves with the zemindari. Malversation in respect of such temple endowments is very rare and, as a rule, the relative social position of the zemindar who is the trustee of such temples to that of the members of district committees would be such that the former cannot reasonably be expected to submit himself to be directly interfered with, and controlled and checked by the latter.

13. The same observation is applicable though from a different standpoint of view to another class of temples of which the trusteeship is also hereditary in the line of certain high priests called *Acharyas* or *Gurus*. The policy of the present Act in maintaining a distinction so far as the jurisdiction of the district committees is concerned between the two classes of temples described in sections 3 and 4, both of which classes no doubt are equally subject to the jurisdiction of civil courts should in substance be adhered to. But as the Indian Trusts Act is inapplicable to public or private religious or charitable endowments though some of its

provisions as being only enunciation of general principles of law applicable to all trusts will be equally applicable to such religious endowments, it is desirable to incorporate the more important of those provisions in the Bill and enjoin compliance therewith by trustees of both the classes of temples. The first and primary duty of every trustee being to keep a regular account, hereditary trustees cannot reasonably complain of their being required to do so and lodge the account periodically with the temple committee so as to be accessible to the beneficiaries for inspection and also prevent the possibility of accounts being cooked up or tampered with on future occasions when such trustee may be required to produce his account in a court of justice. And it will be as much in the interests of the trustees as in the interests of the beneficiaries that the trustees accounts should be annually audited and published. In the draft Bill of the Madras Committee already referred to, provision has been made for bringing the class of temples described in section 4 of the existing Act within the scope of the Act to this limited extent without departing in substance from the principle of the existing Act.

14. The whole matter in connection with the amendment of Act XX of 1863 in regard to religious endowments in this Presidency has, for more than quarter of a century, been considered on several occasions by committees specially appointed for the purpose by Government, and the draft Bill last submitted in May 1896 in no way departs from the principles of Act XX of 1863 in its policy of religious neutrality on the part of Government and of non-interference by the officers of Government in the internal management of religious institutions and endowments. The existing Act provides for election of members of committees after they have once been formed by nomination by Government, and it also provides for nomination by civil courts of members of committees when no election has been duly made of such members. Jurisdiction of civil courts over religious trusts and their administration is in no way impaired or affected by Act XX of 1863 and is as complete and absolute as over secular trusts.

15. The provisions introduced in the Madras draft Bill already referred to but which do not find a place in Act XX of 1863 in no way depart either from the principles of Act XX of 1863 or from the general law of trusts, and are intended simply to supply the defects in Act XX of 1863 by enabling committees constituted under that Act to exercise their control over religious trusts and discharge their duties more effectually, and also to enable them to seek the assistance of civil courts by a summary petition in the first instance instead of by a regular suit. There is not a single provision in that draft Bill which either directly or indirectly compels or enables any public officers to take any part in the internal management of these institutions or their endowments.

16. So far as this Presidency is concerned, I am decidedly of opinion that fresh legislation is necessary and that it ought to proceed on the lines of the draft Bill submitted by the Madras committee. But in deference to the view once expressed by the Government of India in connection with a former draft Bill, no provision is made for the constitution of a central committee in the last Bill submitted by the Madras committee. But the establishment of a central committee with head-quarters at Madras is highly desirable, and if on reconsideration, the Government of India approves of it, provision could easily be made for it in the draft Bill. I do not know whether there exists the same necessity for fresh legislation on the subject in other provinces, and if so whether an amendment of the law on the lines of the Madras draft Bill would be suitable to those provinces. In view to such considerations, it would perhaps be the most expedient course, as once suggested by the Government of India to repeal Act XX of 1863 in so far as Hindu temples and religious establishments in the Presidency of Madras are concerned, and permit the local legislature to pass a local Act suited to the requirements of this Presidency without departing from the principles of Act XX of 1863.

(Signed) V. BHASHYAM AIYANGAR,
Ag. Advocate-General.

From M.R.Ry. P. CHENTSAL ROW Pantulu Garu, C.I.E., to the Chief Secretary to Government, dated Madras, 22nd August 1897.

I have the honour to acknowledge the receipt of the G.O., No. 501, dated 3rd May 1897.

2. The subject of the revision of Act XX of 1863 has been engaging the attention of the Madras Government and of the Madras public for the past twenty years, and I have had the honour of being a member in every one of the committees appointed by the Madras Government for the investigation of the subject. I can, therefore, with some claim to knowledge and experience say that the need for the revision is largely felt by all classes of the public, excepting those that are interested in the misappropriation of the funds endowed for the maintenance of religious institutions. This view having been more than once endorsed by the Government itself, I need not dwell further on the subject. The only points which have now to be considered are the form and the extent of the revision which has to be made in the existing law.

3. The first committee appointed by the Madras Government, which was presided over by Sir William Robinson, suggested the introduction of a Bill somewhat similar in principle to that now introduced by the Hon'ble Mr. Ananda Charlu, the main difference between the two Bills being that, whereas Sir William Robinson's committee recommended the appointment of a single paid central committee for the supervision of all Hindu institutions with full powers to remove the trustees found guilty of malversation or other dereliction of duty, subject to the protection of Courts, the Hon'ble Mr. Ananda Charlu recommends the appointment of different honorary central committees to superintend the different classes of institutions, with power to move the courts by a regular suit for the dismissal of the trustees found guilty of malversation or dereliction of duty. Sir William Robinson's Bill was, however, rejected by the Government of India, on the ground that it violated the policy of Act XX of 1863. Several other Bills were subsequently submitted for consideration, but each of them has been rejected on a similar ground.

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|--|---|
| 1. The Hon'ble Mr. S. Subramania Iyer. | The last one, which was thought to be |
| 2. " V. Bhashyam Aiyangar. | entirely in consonance with the policy of |
| 3. " C. Sankaran Nair. | Act XX of 1863, was submitted to the |
| 4. " P. Rajaratna Mudaliyar. | Madras Government, last year, by the |
| 5. " P. Chentsal Row. | committee consisting of the members |

noted in the margin, and I am not aware of the views expressed by the Government thereon.

4. The Hon'ble Mr. Ananda Charlu's Bill is wider in its scope than the one submitted by the Madras committee last year, but it must be remembered that the latter Bill was drawn up in deference to the wishes of the Government of India and not as an adequate measure for the protection of the Trust funds that are now being recklessly squandered and lamentably misappropriated. I am, however, now glad that the Government of India have waived their former objection and sanctioned the introduction of a Bill which, I think, when becomes law, may prove successful in removing the long existing abuse of funds.

5. I must not, however, omit to mention, that though the principle of the Hon'ble Mr. Ananda Charlu's Bill has my cordial approval, it requires, in my opinion, considerable improvement in detail. The duties and powers of the trustees and of the committees concerned have to be defined with greater precision and the provisions made for obtaining funds required for the institution of suits and other purposes have to be elaborated. I hope, however, that all this will be done by the Select Committee appointed to consider and report upon the Bill, and I shall not therefore enter into those details.

6. I fully agree with the Hon'ble Mr. Ananda Charlu that the existing difference in the treatment of institutions under the supervision of hereditary trustees and of those whose nomination happened to be subject to the approval of the Board of Revenue in 1843, when the Government severed their connection with the management of Hindu religious institutions, is meaningless and even mischievous.

7. The only doubt, I entertain in regard to the Bill is, whether the central honorary committees which Mr. Ananda Charlu proposes to create will do justice to the work assigned to them. Considering the vast number of the institutions which each

committee will have to superintend and considering the magnitude of the funds which requires protection, I feel sure that, unless the committees concerned devote their full and undivided attention to the subject and sacrifice their whole time to it, they will not be able to do all that is expected of them; and, knowing as I do, that the leisured and wealthy classes of our people do not, as a rule, possess the intelligence, zeal and ability to manage the institutions, while the intelligent classes possessing the required qualifications cannot afford to sacrifice their whole time to the work, I seriously doubt whether the committees newly created would discharge their duties to the satisfaction of all concerned. But the feeling for the creation of honorary tribunals by popular elections is now so great that I do not think that my apprehensions will be shared in by my friends of the modern generation. In my humble opinion, however, it is not desirable to risk a failure and it is really more economical to spend a small portion of the funds to prevent their waste than to save the cost of supervision by trusting to irresponsible agency, thus risking an indifferent supervision which it is our object to prevent.

8. On the whole I welcome the Hon'ble Mr. Ananda Charlu's Bill, and I am sure that it will, under any circumstances, be more efficacious than the existing Act XX of 1863 which is now practically a dead letter.

(Signed) P. CHENTISAL ROW.

From the Hon'ble K. KALAYANASUNDARAM AIYAR Avargal, High Court Vakil, Tanjore, to the Chief Secretary to Government, dated 12th September 1897.

With reference to your memorandum of the 31st ultimo, I have the honour to inform you that my objections to, and my remarks on, the Hon'ble P. Ananda Charlu's Religious Endowment Bill were fully stated by me in a letter addressed to the Secretary to the Legislative Council, dated 23rd March 1897, and that I have nothing to add to the statement therein contained.

(Signed) K. KALAYANASUNDARAM AIYAR.

ENCLOSURE.

EXTRACT from a letter from the Hon'ble K. KALAYANASUNDARAM AIYAR AVARGAL, to the Secretary to Government, Legislative Department, dated 23rd March 1897.

2. First, with regard to the scope of the Bill, Act XX of 1863 applies only to religious endowments, and the preamble of Mr. Ananda Charlu's Bill expresses an intention to amend that Act alone. But section 1 of the Bill says that it applies not only to all non-Christian religious endowments, but also to all non-Christian charitable institutions. These latter are now regulated by Regulation VII of 1817 by the Local Boards Act, &c., which the Bill professedly does not seek to amend. I think that this confusion ought to be remedied. But apart from this I entirely differ from Mr. Ananda Charlu as to the wisdom of doing away altogether with the distinction between the institutions described in section 3 and those described in section 4 of Act XX of 1863. The Government of the country has under that Act given up all connection with the latter class of institutions, and however desirable it might be to devise a mode of exercising *some* control over them, an attempt at this distance of time to put them on the same footing as the institutions described in section 3, would produce a howl of dissatisfaction which I am not prepared to ask Government to face.

The blending of both classes of institutions has caused some confusion in section 12 of the Bill, which provides that the district committee should have absolute control over them in all matters "including the appointment of trustees" according to the custom prevailing in each institution. It is unnecessary to point out that in respect of institutions falling under section 4 of Act XX, the custom regulating the appointment of trustees might often conflict with "the absolute control" of the district committee, as prescribed in the section.

Further, I fail to see any reason for excluding from the operation of the proposed measure institutions whose annual income is Rs. 250 or less.

3. With regard to the details of the Bill through Mr. Ananda Charlu and myself are agreed as to the defects in the existing Act, I am sorry to say that I cannot agree with him as to the method proposed by him for remedying them.

4. First, with regard to the central and district committees advocated by Mr. Ananda Charlu, it seems to me that he has made a mistake though I cannot see how such a mistake could have been made by him. Paragraphs (3) and (4) of his explanatory memorandum are evidently intended to explain the reason for the creation of district committees as well as a central committee. He seems to be under the impression that the present controlling committees stand in the position of the central committee proposed by him and he takes credit for interposing a district committee as an intermediary—now non-existent—between the controlling committee and the trustees. All the remarks in paragraph (4) of the explanatory memorandum clearly point to the existence of such an impression on the mind of Mr. Ananda Charlu. But the facts are otherwise. For, at present, we have a number of district committees—one for each district in some cases, two or more for each district in other cases, and one for each taluk in others again—which occupy exactly the position of the district committees proposed by Mr. Ananda Charlu. He says: "want of touch with the trustees and the want of ready and vigilant supervision on the part of committeemen have been the greatest drawbacks all these years, as the committee is necessarily located at a considerable distance in too many instances." This description would apply to the existing committees only if they were in the position of the proposed central committee, but it certainly does not apply to them as they now exist. So that ever since the passing of Act XX of 1863, the watchful eye of the committees and of all the units of the district electorate have been continuously falling on the action of the trustees subject to their control, but all this *espionage* has thoroughly failed to prevent escapades on the part of trustees, to exercise a "preventively wholesome check" or to keep them straight. If then the district committee or committees of each district have failed to secure the temples in that district from the mismanagement admittedly existing, how could a central committee located, say, in the town of Madras, prevent mismanagement in all the districts of the Presidency? The fact is that the real cause of the failure of the existing committees to secure a proper management of the institutions under them is not "the want of touch," &c., but the absence of suitable provisions in the existing enactment for making the power of the committees felt and their orders respected. This defect I seek to remedy by the simple provisions contained in sections 11 and 12 of my Bill.

5. Independently, however, of the mistake which I believe to have led to the proposal to create a central committee, I am of opinion that such a committee would not be useful for any purpose. A single honorary committee for the whole Presidency would, for one thing, be unable to exercise effective control over all the district committees and the temple trustees of the Presidency, and for another would be unable to arrive at a just and sound decision with regard to disputes between district committees and the trustees under them, because the parties would be unable, except at the risk of undergoing great expense and trouble, to present their respective cases in a proper light before the court of the central committee. Such difficulties, always attending schemes based on centralization, would be especially great where the dispute relates to a matter in which the parties to it are not personally or pecuniarily interested, but which affects the interests of the general public, and the court adjudicating it is composed of men who are not paid for their work.

6. I need hardly add that I am utterly opposed to making final the decisions of the central committee, or of any committee for that matter. In this respect I am partial to the provision contained in section 12 of my Bill, which in effect provides that the decisions of the committee should be presumed to be right until they are set aside by the courts at the instance of the trustees affected thereby.

7. Then, with regard to the institution of the electorate, Mr. Ananda Charlu advocates the framing of a list like a jury list. Section 3 of my Bill empowers the Local Government to revise from time to time the existing rules framed under Act XX of 1863, I am distinctly of opinion that the qualifications of voters should be

clearly prescribed and should be high enough to prevent the barter that to the knowledge of all is now publicly going on. I may add that the provision in section 3 of Mr. Ananda Charlu's Bill compelling committees to include or eliminate the name of any person according to the wishes of two-thirds of the electorate seems, to say the least, to be impracticable.

8. In section 7 of his Bill Mr. Ananda Charlu limits the term of office of a committee member to three years. However desirable it may be to change the *personnel* of the committee often, the difficulties attending an election would seem to favour my view that the term of office should be five years. This, however, is not a very essential matter.

9. The provision in section 9 of Mr. Ananda Charlu's Bill is highly arbitrary and seems to have no parallel to support it.

10. Mr. Ananda Charlu's Bill seems further to be defective in not specifying the causes for which a trustee or a committee member is liable to dismissal though section 12 of the Bill refers to the matter. Moreover, the Bill does not make provision for the compulsory auditing of temple accounts or those of the committees. Also, the scales of establishment provided for the district and central committees seem to be inadequate.

(Signed) K. KALAYANASUNDARAM AIYAR.

From the Hon'ble P. RAJARATNA MUDALIYAR, Diwan Bahadur, to the Chief Secretary to Government, dated Madras, 1st December 1897.

Referring to G.O., No. 501, Public, dated 3rd May 1897, I have the honour to submit the following brief remarks on the Bill introduced in the Council of the Governor-General by the Hon'ble P. Ananda Charlu, C.I.E., to amend Act XX of 1863 relating to the management of religious endowments.

2. The causes which led to the failure of Act XX of 1863 to provide an effective machinery for the control of these endowments which had previously been under the supervision of the Board of Revenue are too well known to need repetition. For the last quarter of a century nearly, various suggestions for amending the Act have been sent up from this Presidency, but from one cause or another, none of them have met with the approval of the Government of India. At the instance of that Government, a Bill was submitted in 1893 by a committee presided over by the late Sir Justice T. Muthusami Aiyar, but that too was rejected as involving an undue amount of direct interference on the part of the executive in the management of religious institutions. In 1894, another committee was appointed to reconsider the Bill (G.O., No. 73, Legislative, dated 20th May 1894), and a revised Bill framed on the lines laid down by the Government of India was submitted in June 1896. The committee included among its members M.R.Ry. P. Chentsal Row, C.I.E., a former member of the Supreme Legislative Council, the Hon'ble Justice T. Subramanya Aiyar, C.I.E., the Hon'ble V. Bhashyam Aiyangar, C.I.E. (Acting Advocate-General), the Hon'ble C. Sankaran Nayar, Diwan Bahadur S. Srinivasa Raghavaiyengar, C.I.E. (now Diwan of Baroda), and myself. I very much wish that the Hon'ble Mr. Ananda Charlu had adopted this Bill in its entirety. I even delayed submitting this report with a view to bring about a meeting of the members of the committee referred to above and the Hon'ble Mr. Ananda Charlu to discuss the subject, but this had not been found possible.

3. Personally I see no objection whatever to the principle of the Bill introduced by Mr. Ananda Charlu, though in one important respect, it goes beyond the limitations laid down by the Government of India when it returned the Bill of 1893 for revision.

As pointed out by Hon'ble Mr. Ananda Charlu, there is no reason for making a distinction between "endowments which had been under the direct control of Government at one time and those that had not" and so, malversation of the one class being as culpable as of the other; but as the Government of India has definitely refused to

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allow temple committees to interfere with religious institutions which have always been supervised by hereditary trustees (that is those falling under section 4 of Act XX of 1863), it is useless discussing the propriety or otherwise of the measure, and I would accordingly suggest to the Hon'ble Mr. Ananda Charlu that his Bill should be modified so as to meet the wishes of the Government of India. It would be quite sufficient if some such provision as that recommended by the committee appointed under the Government Order of 1894, in paragraph 4 of its letter to the Chief Secretary to Government, dated 23rd June 1896, is inserted in the Bill to impose upon the hereditary trustees the duty of maintaining regular accounts of receipts and expenditure and of submitting copies of these accounts annually to the committee concerned for examination and publication. In the case of non-hereditary trustees, I would give power to committee powers to dismiss or suspend them for proved misconduct, and to the central government of central committees, the district Government of India objects to the appointment of central committees, the district Government of India objects to the appointment of powers over the non-hereditary trustees as recommended by the Government referred to above.

(Signed) P. RAJARATNA MUDALIYAR.

From the Hon'ble C. SANKARAN NAYAR, to the Chief Secretary to Government, dated Madras, 2nd March 1898.

With reference to G.O., No. 501, Public, I have to state that I have nothing to add to the report which the committee, of which I was a member, has already submitted to Government for the amendment of Act XX of 1863.

I do not consider it desirable to constitute a central committee.

(Signed) C. SANKARAN NAYAR.

From MUHAMMAD MAHMOOD Khan Bahadur, President, Central Muhammadan Association, Madras, to the Chief Secretary to Government, dated 15th January 1898.

With reference to the Proceedings of the Madras Government, No. 501, dated 3rd May 1897, *in re* the Hon'ble Rai Bahadur P. Ananda Charlu's Religious Endowment Bill, I am desired by the association to report as follows:—

At a general meeting of the association, a sub-committee was appointed to consider the aforesaid Bill with a view to submit an opinion thereon. The report submitted by the sub-committee was fully considered and discussed by the association which now begs to submit its views for the information of Government.

The present Act XX of 1863 fails to provide for a proper check over the trustees of native religious institutions, and the consequence is that most of them, if not all, are at present grossly mismanaged. Hence, in the opinion of the association, it is an *absolute necessity* that the said Act should be superseded by a more effective legislation.

The proposed Bill is obviously an attempt to meet the present want by providing an effective check against the malversation of trust properties by unscrupulous trustees.

The association is, however, diffident whether the country is sufficiently advanced for the scope of the Bill and whether qualified and willing persons can be found in every part of it to take so much interest in matters of public benefit at the expense of their own time and purse. Even granting that the elective system as proposed would be a success, the Bill does not give sufficient powers of control to the proposed committees in that they are denied the right of removing or even suspending trustees for misconduct, however culpable. The only course therefore left open to the committees under the circumstances is to have recourse to a court of law for the removal of negligent or dishonest trustees, which is precisely the reason why the existing committees are powerless and Act XX of 1863 a failure.

The association is therefore of opinion that, in its essential principles, the proposed Bill should be altered in two respects in order to make it workable, viz.—

(a) Instead of having large electorates as proposed in the Bill, the right of electing members of district committees should be vested in smaller but more intelligent bodies, such as municipalities, district and taluk boards, &c., subject to a veto by the District Judge. The right of electing members of the central committees may stand as is proposed in the Bill.

(b) The right of suspension and dismissal of trustees may be vested in the central committees, subject to an appeal to the High Court by the aggrieved trustee.

The association does not think it necessary at the present stage to consider minor details, but there is one important point of detail to which the Bill, the removal of draw the attention of Government. Discipline is made contingent on the unanimous members of committee members. This provision, in the opinion of the association, will render the rule unworkable, inasmuch as experience shows that such unanimous votes are hard, if not impossible, to obtain. The offending members should therefore be liable to be removed by a majority of votes.

The association hopes that the Government will be pleased to favourably consider the aforesaid suggestions.

(Signed) MUHAMMAD MAHMOOD,
President.

ORDER—No. 183, Public, dated 13th February 1899.

The following letter will be despatched :—

(True Extract.)

G. STOKES,
Chief Secretary.

LETTER—No. 184, Public, dated Fort St. George, 13th February 1899, to the Secretary to the Government of India, Legislative Department.

I am directed to refer to the correspondence ending with your telegram, dated the 31st January 1899, regarding the Bill to amend Act XX of 1863 (Religious Endowments) which the Hon'ble Rai Bahadur Ananda Charlu has introduced into the Supreme Legislative Council.

2. In reply, I am to express the regret of His Excellency the Governor in Council at the delay which has occurred in communicating to the Government of India the opinion of this Government upon the proposed enactment. When Mr. Carnduff's letter, No. 769, dated the 8th April 1897, was received, this Government had under consideration proposals, emanating from three different sources, for legislation on the subject of the better treatment of religious endowments. The subject is one which is of great importance in this Presidency, and one which has, as the Government of India is aware, been for many years under correspondence. His Excellency the Governor in Council welcomed the introduction of the Hon'ble Rai Bahadur Ananda Charlu's Bill as an indication that the question of legislating in this matter had at length entered upon a practical stage. Finding himself, however, at the outset unable to approve of the provisions of the Bill in question, His Excellency the Governor in Council set about to devise an alternative scheme for legislation, with the intention of laying it before the Government of India simultaneously with its opinion upon the Hon'ble Rai Bahadur Ananda Charlu's Bill. Such a scheme has been drawn up and has now been for some time past under the consideration of Government. With regard, however, to some of its details further discussion is necessary. Looking therefore to the great importance of the subject, and recognizing that the submission of immature

proposals would retard rather than advance the final settlement of the question, His Excellency the Governor in Council resolves to lay before the Government of India without further delay his views upon the Hon'ble Rai Bahadur Ananda Charlu's Bill, leaving for a later date the submission of the alternative proposals which this Government has to make.

3. The Bill in question was, on its receipt, referred for remarks to the Hon'ble the Judges of the High Court and to certain native gentlemen of standing and experience. From their opinions, copies of which are enclosed, it will be seen that the Bill would require radical alteration before it could be considered in any degree a practicable measure. In the objections put forward in these opinions His Excellency the Governor in Council generally concurs. It is, however, unnecessary at present to go into detail the directions in which amendment of the Bill is required, for His Excellency the Governor in Council is convinced that the wide scope of the proposed legislation constitutes a fatal objection to it. The Bill purports to apply to all non-Christian religious and, fatal objection to it. The Government of India is aware of the difficulty which has attended the efforts made for many years past to legislate in this Presidency for the protection of Hindu Religious Endowments alone. The task of framing a law which should apply uniformly throughout India even to Hindu institutions, with their vast diversity of conditions and requirements, is in the opinion of His Excellency the Governor in Council a well nigh impossible one; when it is further proposed to include in the purview of one Bill the endowments of other classes of the community, the Government fears that the attempt can only result in the ultimate abandonment of the proposed legislation, and the consequent postponement for an indefinite period of the amendment of the law which is undoubtedly required in this Presidency.

4. The objection to the wide scope of the Bill is one which will, His Excellency the Governor in Council expects, be urged upon the Government of India by other administrations. Even if it were likely that the measure could be put into such a shape as would render its application possible in all parts of India, His Excellency the Governor in Council holds that to ensure the fullest expression of opinion on the part of the persons most affected by the proposed legislation, and to avoid the danger, to which the Government of India has referred, of accepting as the voice of the public the expression of the views of a small section of educated persons, it is essential that legislation, as far as this Presidency is concerned, should take place at Madras rather than at Calcutta.

5. In these circumstances I am to say that this Government desires strongly to urge that the Hon'ble Rai Bahadur Ananda Charlu's Bill should not be permitted to become law, as far at any rate as it relates to the Madras Presidency.

G. STOKES,
Chief Secretary.

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