M.R.O. 14—10,000—21-4-23.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1691	**Press** / ~~Mis.~~
A17. 418	
Dated 22 — 9	1860.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
22nd September 1860.

No. 417. Read the following letter from Lord H. U. BROWNE, Under Secretary to the Government of India, to J. D. BOURDILLON, Esq., Secretary to the Government of Fort Saint George, dated Fort William, 31st August 1860, No. 1,818:—

SIR,

In continuation of the letters from this Office, Nos. 985 and 1,642, dated the 11th May and 7th instant, I am directed to transmit the accompanying copy of a Minute, dated the 22nd instant by the Honorable Member of the Legislative Council for Madras, on the Bill before the Council to repeal Regulation XIX of 1810 of the Bengal, and Regulation VII of 1817 of the Madras Code, and to request an early reply to the first mentioned letter.

MINUTE.

1. It is nearly four months since the Select Committee was appointed to consider and report, under the 70th Standing Order, whether any and what special provision was required in the Bill introduced to repeal Regulation XIX 1810 of the Bengal Code, and Regulation VII 1817 of the Madras Code, for the performance of the duties which by the law now devolves on the Officers of Government.

2. It was understood at the time that the Committee was appointed, that reference would be made to the several local Governments, who would be invited to submit an expression of their views and wishes upon the proposed alteration of the law, and I believe that the non-receipt of any communication upon the subject has been the cause of the Committee never having yet been assembled.

3. The Honorable Member for Bengal, in a Note dated the 16th instant, has circulated, for the consideration of the Committee, a sketch of the chief provisions which, in his opinion, the new Law should embody, and as it may facilitate our deliberations hereafter if the views of each Member of the Committee be known before we meet, I shall take leave, very briefly, to state what my own views are, and explain the extent to which they differ from those expressed by the Member for Bengal.

4. From the Extract from the Secretary of State's Despatch which was read by Sir Bartle Frere when he introduced the Bill now before the Committee, it appears that the object which the Government at home desire to attain is "the severance of all connection between the "Officers of Government and the Religious Institutions of the Natives," and it is important to bear constantly in mind the end we have in view, in considering the means by which we propose to attain it. This observation would be trite and common place, but for the application which I mean it to have to the views expressed in the Note of the Member for Bengal, and in the provision of the Draft Act which he has drawn.

5. The Member for Bengal would limit the provision of any new Law to the Settlement of "complaints of vacant or usurped possession," and of "misappropriation of the funds of a "trust," and in the Draft Act which he annexes to his Note, and in the Extract from the Lieutenant-Governor's letter which he quotes, it is proposed that the Zillah Court of the District shall be the authority to act in either case. The Lieutenant-Governor says—"on the death of "a Trustee the Court will appoint a successor on the motion of any one interested," and the Draft Act declares that, "when it shall appear to the Court that its interfer-

Section IV. "ence is called for by reason of the possession or administration to the "endowment being in abeyance or being usurped, * * * it shall

Section IX. "declare the administration of the funds vacant, * * * and shall "appoint a Jury to nominate a fit and proper person to administer the "affairs of the endowment, and the Court shall appoint the person so nominated."

6. I must confess that these provisions do not appear to me to be calculated to attain the end which the Home Government has declared that they have in view, namely "the severance "of all connection between the Officers of Government and the Religious Institutions of the "Natives." It is objected to the present law, and in my opinion justly, that the appointment to vacant trusts is in the hands of the Collector, but I look in vain for any thing that shall remove

the ground of this objection in a simple transfer of the obligation to appoint from the Collector to the Judge. The interference of the Judge should, in my opinion, be restricted to a decision on the merits of rival assertions of a right, and should not be exerted to fill an accidentally vacant trust as proposed by the Lieutenant-Governor, or to confirm the nomination of a Jury as proposed in the Draft Act. This degree of severance will not settle the question which has been too long a vexed one, and will give satisfaction to no one. Ever since 1844, the matter has been under discussion, and if we are now to legislate upon it, we ought to do so in such a manner as to set it at rest for ever.

7. The second point to which the Member for Bengal directs attention in his Note, and which it is proposed to provide for by the 10th and following Sections of the Draft Act, is the misappropriation of trust funds, and without entering into detail I will make three remarks on the subject. *First*, I think that there should be some authority to audit the accounts of Trustees of Religious Institutions as a check upon improper expenditure, whose evidence upon the propriety or impropriety of disbursements would be a guide to the Court in any prosecution for malversation. *Second*, I think that there should be a short limit within which only such charges may be brought; and *third*, I think that the trial of all cases of asserted malversation should be under the Breach of Trust Act, and be dealt with according to its provisions—a mere removal from Office, as provided in the 16th Section of the Draft, is an inappropriate and insufficient punishment for fraud.

Act XIII of 1850.

8. Having stated my objections to the proposition brought forward by the Member for Bengal, I will submit to the consideration of the Committee the line I would recommend for adoption in our legislation upon this question.

9. I objected at the second reading of the Bill to any sudden and abrupt surrender of the position at present occupied by the Government as guardian of the property of Religious and Charitable Institutions, as unjust towards the great mass of the people on whose behalf we undertook to manage it when we assumed the Government of the country, and for whom we have continued to manage it for more than sixty years; but I am quite prepared to recommend that our severance from the management shall be entire, and shall follow immediately on our making due provision for the future.

10. This provision I would endeavor thus to secure. In each District I would have the Collector appoint a Board of the most respectable Natives, selected from all castes and all classes, in number varying with local requirements, into whose hands I would deliver the sole and entire control over all Religious Institutions in the District. Popular election is impracticable, and it is a necessary evil that the first appointment should be with the Collector, but, with that, his connection with the Board should cease, and all vancancies should be filled by self-election, provision being made that the newly-elected Member should be of the same caste as he who had caused a vacancy, in order to preserve the original balance of interests. All endowments should be managed by this Board—all expenditure made by their authority—all appointments to Trusteeships, or places in and about the institutions should be made by them, hereditary and nominative rights being preserved.

11. Further, I would have a Board of Audit similary appointed and kept up, whose duty it should be to audit the accounts of each separate Institution for each past year, and no question of misapplication of funds or of malversation should be admitted in Court, if it referred to any expenditure which had been audited and passed. I consider this to be essential; *first*, to secure respectable men for the Board of Administration, as none would be willing to serve if constantly liable to charges ranging over several years; and *second*, to prevent the Courts from being swamped with groundless and vexatious complaints.

12. I would have all cases of misappropriation of funds tried under the Breach of Trust Act XIII of 1850, on the prosecution of either Board.

13. I mean what is said above to be but a mere outline of the scheme I would propose, and it would require careful elaboration if it were adopted as the basis of a Law. To prevent misunderstanding, however, I may as well add that whenever it might be found necessary, two Boards of Administration might be appointed, one to control the Hindoo Pagodas, and the other the Mahomedan Mosques, and that provision would be needed in the Law to enforce election to vacancies under certain penalties to prevent the administration falling gradually into the hands of only one or two persons. The Board of Audit, in Districts which had two Boards of Administration, might be composed of Hindoos and Mahomedans, and separate Boards of Audit would not be necessary.

H. FORBES.

The 22nd August 1860.

Ordered that the following letter be despatched.

No. 418. From J. D. BOURDILLON, Esq., Secretary to the Government of Fort Saint George, to W. GREY, Esq., Secretary to the Government of India, dated 22nd September 1860, No. 1,691:--

SIR,

1. I am directed to acknowledge the receipt of your Under Secretary's letter dated 31st August No. 1,818, transmitting copy of a Minute by the Member of the Legislative Council for Madras, on the bill now before the Council to repeal the Regulations of Bengal and Madras affecting Native Religious Endowments, and requesting an early reply to your letter of May 11th, No. 985.

2. In reply I am directed to state that the views of this Government on the subject in question were communicated for the information of the Government of India in my letter to your address dated the 13th instant, No. 1,587. The Government have now considered Mr. Forbes' Minute, but they do not consider it necessary to record any further observations on the subject.

Revenue Department

No 1691.

To

W. Grey Esqre

Secretary to the Govt of India.

Sir,

I am directed to acknowledge the receipt of your Under Secretary's letter dated 31st Augt No 1818, transmitting copy of a minute by the Member of the Legislative Council for Madras, on the bill now before the Council to repeal the Regulations of Bengal and Madras affecting native religious endowments, and requesting an early reply to your letter of May 1st No 985-

2 In reply I am directed to state that the views of this Govt on the

communicated for the information of the Govt. of India in my letter to your address dated the 13th Instant No. 1587. The Government have now considered Mr. Norbe's Minute, but they do not consider it necessary further to record any observations upon the subject.

Fort St. Geo: 22d Sep.

Revenue 1860 Sept.
Pro: of Govt for Sept.

No. 1691.

To the Secretary to the
Government of India.
Dy 22d Sept. 60.

To Govt. of India
Repeal of certain Regulations
of the Bengal & Madras Codes

22/11/60
201-211
13-9-60
302
Aug 60

Copy in a Letter to Govt
of 25th January 61 No 17

Stating that the views
of this Government on the
Bill to repeal the Regula-
tions of Bengal & Madras
affecting Native Religious
endowments have been
communicated in the letter
of 13th Instant.

No 417 & 418.