

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.

1275

Press
Mis.

Dated

30-5-

1866.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
30th May 1866.*

Read the following papers :—

No. 513. Memorandum from the Acting Assistant Secretary to Government, Legislative Department, to the Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 23rd March 1866, No. 147 :—

With reference to Proceedings of Government, specified in the margin, the undersigned has the honor to forward, Revenue Department, 22nd October 1864, No. 1,954, for the information of the Secretary to Government, Revenue Department, copy of a Bill, introduced into the Council of the Governor General, for the purpose of making laws and regulations, the object of which is to empower the Committees appointed under the Religious Endowments Act XX. of 1863, to raise the costs and expenses incurred in the performance of their duties, and for other purposes.

No. 514. From the Secretary to the Government of India, (Legislative), to the Chief Secretary to the Government of Madras, dated Simla, the 24th April 1866, No. 287.

1. I am directed to call the attention of the Government of Madras to a Bill to empower the Committees appointed under Section 7 of Act No. XX. of 1863 (*to enable the Government to divest itself of the management of Religious Endowments*), to raise the costs and expenses incurred in the performance of their duties, and for other purposes, which is printed in the *Gazette of India* of the 10th March 1866. The Bill in question has been prepared at the instance of the Government of Madras.

2. The Committees appointed under that Act, have no power to raise out of the property belonging to the Religious Establishments under their superintendence, the expenses necessarily incurred in the performance of the duties imposed upon them by Section 13, although, under the following Section, they are liable to be sued for neglect of those duties. The Bill, accordingly, proposes to empower the Committees to raise the requisite amount by sale or mortgage of the funds in their hands, or in the possession of the Religious Establishments, and compels the Trustees and Managers of those establishments, if necessary, to join in the disposition.

3. You are requested to state, in the first place, for the information of the Governor General in Council, whether difficulties in raising funds for the above purposes continue to be experienced in the territories under the Madras Government; and if so, I am to ask your opinion on some objections which have been raised to the measure on the ground of the supposed inalienability of Religious Endowments even for the objects contemplated by the Bill. The considerations which appear to affect the question, but upon which I am desired to request the views of the Madras Government, are as follows :—

4. In the case of Hindoo Religious Endowments, the provisions of the Bill do not appear to be open to objection. It is believed that no good native authority is producible to shew that *devottara* cannot be aliened for the benefit of the Institution endowed. But the doctrines of Mahomedan law, as to the inalienability of *wazf*, or property dedicated to God, render the application of the Bill to Mahomedan endowments a matter requiring further consideration.

Proceedings of the Madras Government, Revenue Department,
30th May 1866.

5. It seems clear that the general principle of Mahomedan law is that *wagf* is inalienable. It has even been held by the late Sudder Court of Bengal that a *Matwalli*, or Manager of a Religious endowment, could not mortgage the property temporarily for the repair of the mosque, and the High Court at Calcutta has lately held* that the trustees of *wagf* cannot grant a *maurusi* (or hereditary) lease of any portion of the property. In the latter case, it did not appear that the lease was for the benefit of the mosque.

6. There is, however, some authority for holding that leases of such property may be granted for a period not exceeding three years. Further, the Agra Sudder Court has ably held that the *Matwalli* is entitled to dispose of such portion of the property as may be required to raise money for necessary repairs, and Mr. Justice Macpherson†, in a passage cited with approval by the High Court, lays down the law in a manner from which it may be inferred that he is of opinion that alienations falling "within the scope and spirit of the endowments," may be supported.

7. The Bengal Government in Regulation XIX. of 1810, Section 4, authorized the sale of *wagf* under certain circumstances. And though the Section cited is repealed by Section 16 of Regulation XVII. of 1816, the provision referred to is important as a precedent.

8. Under these circumstances it seems *prima facie* expedient that the Legislature should declare authoritatively that, in the case contemplated in the Bill, alienation of *devottara* and *wagf* property should be permitted, especially as the vendors or mortgagers of the property will generally, if not always, be of the same religion as the grantor, and may, therefore, reasonably be expected not to exercise the power proposed to be given to them in a manner injurious to the endowment.

9. But before taking any legislative steps in this direction, it has been thought desirable to submit the foregoing remarks for the consideration of the Madras Government, and to request that, after consultation with such persons as His Excellency in Council may think most competent to advise on the subject, he will favor the Government of India with his opinion as to the expediency of passing the Bill as it stands, or as to what modifications (if any) he would propose to be made therein.

(True Copy.)

(Signed) J. GROSE,

Under Secretary to Government.

Exd. S. T. Augustin.

REVENUE DEPARTMENT.
FORT SAINT GEORGE,
30th May 1866.

No. 12,75.

No. 515.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA.

SIR,

Miscellaneous.

1. I am directed to acknowledge the receipt of your letter dated 24th ultimo, No. 287, regarding the Bill to empower the Committees appointed under Act No. XX. of 1863, for the management of religious endowments, to raise the costs and expenses incurred in the performance of their duties from the funds of the Institutions under their superintendence.

2. In reply to the question put in paragraph 3 of your letter, I am to state that the Government are not aware that the difficulty experienced in raising funds for the above purposes has ceased.

3. With regard to paragraphs 4 to 8 of your letter, I am to state that whatever may be the doctrines of Hindoo and Mahomedan law, the Government are decidedly opposed to legalizing the alienation of the capital of religious endowments in the manner or for the purposes contemplated in the Bill to which you refer, and believe that such a measure would be viewed by the Native community with aversion, distrust, and alarm. The legitimate and necessary expenses of the Committees ought to be moderate, and it is reasonable that these should be re-imbursed to them so far as this can be done, without detriment to the trusts themselves. The best plan would be to make such expenses recoverable from the annual income of the trusts, after providing for the prescribed ceremonies, &c. The Government would rather leave the Committees to bear the expenses of their office, than entrust them with such dangerous powers as they will possess if the Bill become law.

4. As regards the other provisions of the Bill, the Government would very strongly represent the impolicy and inexpediency of rendering the recovery of demands on the part of the Committees cognizable in any form by the Magistracy. The original Act (XX. of 1863) devolves the settlement of all disputes and questions connected with the management of these religious endowments on the Civil tribunals, thus placing religious rights on the same footing as other civil rights. It is most desirable that this principle should be adhered to strictly, and that such claims as those under consideration should be cognizable summarily and without appeal by the Civil Courts, in which the equity of the demand could be determined, and a suitable penalty, in the form of costs, be imposed on the party in the wrong, such penalty not being chargeable to the trust. In this Presidency, Revenue and Magisterial functions are united in the same Officers, and this renders it further desirable that the Magistracy should have no concern in mere disputes and differences connected with religious endowments.

5. The Bill, as drawn, provides only a fixed penalty—a fine of Rupees 100 on mere proof of recusancy. It is obvious that such a fine may often be too great and often too light a penalty, and the refusal of a Trustee to pay the demand of a

Committee may be meritorious rather than criminal, as when an excessive charge is made.

6. In Section 2 of the Bill, the Government would define the character of the "costs and expenses" by some restrictive expression, such as "costs and expenses necessarily incurred in the legitimate discharge" of the functions of the Committee.

7. The Government would also take advantage of this opportunity to amend Section 10 of the Act, so far as to enable them, when necessary, to amend the Rules framed under it.

I have the honor to be,

Sir,

Your most obedient servant,

(Signed) J. D. SIM,

Secretary to Government.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill, which has been prepared at the request of the Madras Government, is to supply two defects in Act No. XX of 1863.

The Committees appointed in pursuance of that Act are not empowered to raise out of the property belonging to the religious establishments under their superintendence the expenses necessarily incurred in the performance of the duties imposed upon them by Section 13, although under Section 14 they are liable to be sued for neglect of those duties. Little difficulty would of course arise if that property were always vested in the Committees; but occasionally in Bengal and universally in Madras it is now in the hands of the trustees or managers of the several Mosques and Temples superintended by the Committees.

Act No. XX of 1863, moreover, makes no provision for the appointment of a new Committee-man in the place of any member of a Committee wishing to resign.

The present Bill empowers Committees to raise the amount required by sale or mortgage of the funds in their hands or in the possession of religious establishments subject to their superintendence, compels trustees and managers of those establishments, if necessary, to join in the disposition, and relieves purchasers and mortgagees from the necessity of enquiring into the propriety of the transaction. It further authorizes the appointment of a new Committee-man, not only in the case above mentioned, but also in that of a member leaving India.

The 27th February 1866.

H. S. MAINE.

Rev. 863/66
Pres. 30 May 1866 L. 513

Government of India

HOME DEPARTMENT

LEGISLATIVE.

Annexure

TO

Bill to empower the Committees
under the seventh Section of
XX of 1863 to raise the costs
penses incurred in the perform
their duties, and for other pur

(Statement of Objects and Rea

Price two annas.

A
BILL

TO

12th March 1866.

*Empower the Committees appointed under
the Seventh Section of Act No. XX of
1863 to raise the costs and expenses
incurred in the performance of their
duties, and for other purposes.*

Whereas it is expedient to empower
the Committees ap-
Preamble. pointed under the

seventh Section of Act No. XX of 1863
(to enable the Government to divest itself
of the management of Religious Endow-
ments) to raise the costs and expenses in-
curred in the performance of the duties
imposed upon them by the said Act; and
whereas it is necessary to provide for the
appointment of new Members of such
Committees in the place of any such
Members desiring to be discharged; It is
enacted as follows :—

1. It shall be lawful for every such
Committee from time
Power to raise costs of management. to time to pay or cause
to be paid out of the income, or to raise
or cause to be raised out of the capital, of
the property of any religious establishment
under their superintendence or manage-
ment, such sums of money as shall be
required to defray the costs and expenses
incurred from time to time in relation to
or concerning such superintendence or
management. Every Trustee, Manager,
Superintendent and other person in whom
all or any part of such property may be
vested shall be bound to make such pay-
ments out of the said income, and to exe-
cute such conveyances of the said capital
as may be necessary to effect the purposes
of this Act; and, in default of compli-

ance with any of the provisions of this Section, he shall be liable to a fine of one hundred rupees. All prosecutions under this Act shall be instituted before a person exercising the powers of a Magistrate as defined in the Code of Criminal Procedure; and all fines imposed may be recovered in the manner prescribed in Section 61 of the same Code. The amount of such fines when realized shall be paid to the Committee and be applied by them to the purposes of this Act.

2. No person taking under any sale, mortgage or other disposition purporting to be made under the powers conferred by this Act, shall be bound to enquire into the necessity or expediency thereof, or to see that no more than is required is raised.

3. Section IX of the said Act is hereby repealed, and in lieu thereof the following shall be substituted:—

“Every member of a Committee appointed as aforesaid shall hold his office for life, unless he be absent from India or desire to be discharged, or refuse or become incapable to act, or unless he shall be removed as hereinafter provided; and in every such case a vacancy, within the meaning of the tenth Section of this Act, shall be considered to have occurred.”

4. This Act shall be read with and taken as part of the said Act No. XX of 1863.

This Act to be read with Act No. XX of 1863.

Enactment of new Section in lieu of Section 9 of Act XX of 1863.

Purchasers and mortgagees not bound to enquire into necessity of sale or mortgage under this Act.

Rev. 863/66.

Government of India.

HOME DEPARTMENT.

LEGISLATIVE.

A
BILL
TO

Empower the Committees appointed under
the Seventh Section of Act No. XX of
1863 to raise the costs and expenses
incurred in the performance of their
duties, and for other purposes.

(Mr. Maine.)

Price two annas.

Pr 22 Oct/64 no. 284-5
2 Nov -- 1-2-64
C No 1342

Peperome 1866 Vest.
Pro of Govt. of Mys.
From the act.
Vest. to Govt. Regis.
- Lative Depart. -

Dated 23rd March
Received 23rd 1866.
6-3. 32-147.

Forwarding for
information copy of
a Bill introduced in
the Supreme Legislature
- that Council, the object
of which is to empower the
Committee appointed in
under the Religious En-
dowment Act to raise
the costs & expenses in-
curred in the performance
of their duties. See -
1866-1867 or May.

173/3

c 22 Nov/66

Price two annas.

Military Orphan Press - No. 104 L. C. - 12

For orders
The Act 28 of 1863
"to enable the Govt. to
direct to itself the
the management
of Religious Endow-
ments" passed de-
fective in two par-
ticulars -
1. The Committee
from whom the ma-
nagement of these
endowments has
transferred had
no means of pro-
curing funds for
expenses necessary
incidental to their
duties.
II. Members of Com-
mittee - once ap-

pointed - could
not resign the
Office -

The Bill intro-
duced in to the
Legislative Council
of the Govt. Genl.
is intended to
remedy these de-
fects.

Section 1 refers to the
first defect &
seems to me to be
open to two objections.
First - It imposes
no restrictions on
the expenditure of
the Com^{ee}. So far as
its language pres-
cribes the Com^{ee} may spend
any sum on

I think there can be
no doubt being to -

WDM

JP

to this extent to be and
Trustees must pay
what they demand
on pain of fine -

I suppose any one
interested in the
Endowment might
proceed to the Com^{ee}
under Sect XIV of
the original Act
but this is a round
about way of check-
ing their Extrava-
gance - and would

be an awkward
one, a the the might

I don't see that the Com^{ee}
can compel a Trustee to
pay - And there is one
slip in the Act - the Com^{ee}
may fine him Rs 100
if he does not pay - But by inflicting a
fine on him for
his recalcitrancy.
Of course the Com^{ee}
may mean to recover it

cannot exactly
impose a limit
to such expenditure,
but it ought
I think, to show
what expenditure
is recoverable, by
some such general
restriction de-
finition as "Expenses
necessarily incurred
in the legislative
discharge of the
functions of the
Court".
Second. The bill
imposed the duty
of enforcing this
part of the law
on the Magistrates.
The leading principle
of the original Act

a restriction of this
kind is clearly necessary.
WV
JP

is to transfer all
questions requiring
formal adjudica-
tion to the Civil
Courts - the tri-
-nals which ad-
-judicate all ordi-
-nary questions of
private rights &
redress civil in-
juries - This Court
placed religious
rights on the same
footing as other rights
and had the ad-
ditional advantage
no slight one in this
country - of keeping
the Govt. itself - in its
executive capacity -
out of religious dis-
-putes - In every other

The demand is
 matter connected
 with the Court
 documents - The Court
 alone are the tribunals
 not - why should
 this petty matter
 alone be cognizable
 by the Magistrate?
 It is a petty demand
 Section XIX that the
 Act is a petty demand
 that no civil right
 shall be a criminal
 proceedings for a
 criminal breach of
 trust - this follows
 the analogy of the
 property. A report
 that demands is
 known as a
 crime than report
 to pay any ordinary
 bill and this is no

Sec. 5 XIV Reg VII/17 -
 The Civil Court is the place
 of ultimate resort.

none that
 I can find
 WMA
 JP

Is there to be an appeal
 from the Magistrate's
 judgment? If so
 that brings the Criminal
 Court into the
 picture.

Why the 'any' seems
 to be necessary
 for the term to be intended
 WMA
 JP

reason why it should
 be treated as a crime
 There is also an ad-
 ministrative objection
 dragging in the Magis-
 tracy in this fashion
 The Magistrate here
 in a great part of
 India - is also Col-
 lector and our Aut-
 cheries will again
 become the arena for
 religious disputes.

It will be remarked
 that the Section, as
 worded - leaves even
 the Magistrate no
 discretion - If the
 pecuniary be proved
 he apparently must
 fine - and fine
 100 Rs. Exactly!

It seems to me
 that the proper course
 is to make the

Cases copyable in
the Civil Courts by
summary procedure
and instead of fine
(which so far as the
Bills provide may be
paid out of the trust)
to meet the party
cost in costs. who
pay after out of the
trust.

The 3^d Sect. needs
no remark.

It would be well,
while legislating, to
give the pt. power to
alter and amend
the rules framed under
Sect. 4 of the Act. A
set of rules have been
framed by pt. but they
have no legal power
beyond them hereafter.

Order copies to
S. D. L.

44
du gp.

Certain
du gp.

It seems to me to be undesirable to
legislate magisterial action for enforcing
payment of the bills of the Comm. the new
Act xx of 1863 has provided Civil Court
Agency on certain occasions. had not
our judicial establishments are regarded as
being more independent of the Code than
those of the magistracy, & I therefore think
that we should be had to the Civil
Courts for extracting from unwilling Trustees
what we furnish should be paid to Combs.
for expenses unavoidably incurred & then
in their superintendence & management of
the religious institutions to which the Bill
refers. — I would not, however, legislate
any measure of which the effect would be
to cause a sale of any part of the endowment
of the institutions. It ought to be a condition
that the fourteen expenses as to be
discharged from the annual of the
institutions.

Constitution as our best establishment
is in this Presidency with numerous bodies
of different castes bearing full magisterial
powers, it would lead to all sorts of

I would be torn at the expense of - I would make the demand on my own

difficulties of one of these were called on
purchase to act against a trustee reputation
arrival a opposing section of a religious
community. -
It occurs to me that it would be a more
simple plan to pass a law requiring
committees at the beginning of the year
Kendu a Mahom as the case might be,
to frame a sort of Budget of the labours
of the approaching 12 months, &c, which
he could show reason to the contrary, the
trustee would be bound to discharge at
once, or as the year passed on, & convenient
instalments.

It should be provided that if the trustee
or trustee reported to this Budget, the matter
should be laid before the Court Judge of the
District, who should summarily dispose
of the matter & pass an order of final

This it seems
to be common
with Com m
We need

any more apparent. If after this, any
sums were calculated of the trustee,
the act would be treated under the power
of the law code as any ordinary contempt
would be. The punished accordingly.

I think to live. The expense of the Com as on the
to be made in it as an order to be proposed
of the

I see no reason why any fund levied under
these circumstances will be applied to the legis-
lation of the Committee Budget. It would
be a task well to place it, as is usually
done to the public credit.

The severance of the poor connections with
Kendu & Mahom religious institutions has
been regarded by poor Hindus, & Mahomids,
as the most severe blow ever levelled
at their friends. Whatev may have been
the object of that severance, I think we
should avoid any further measure &
which seem ~~to be~~ calculated to diminish
the resources of the institutions still in
existence. and certainly on looking at Mr.
Kend's view, that I cannot help feeling that
to grant power to raise money out of
the capital of the institutions - in other
words, to ~~dispose~~ ^{dispose} of their landed
property would be justly liable to
authorities constructed & therefore, no
part of the Mahomids which
in these institutions it ought to be
proposed.

2.5.00.

W.D.
I concur in the

12
He is out in a Sunday's dress
and would stop up with the
little group of men, and with
a Civil Librarian, and that the
Misses have nothing to say to
him. J.P.

13
I agree generally with Mr. Linn's remarks
on the provisions of the Bill drawn up
by Mr. Mayne expanded and enforced
as they are by the observations of Mr.
Phillips and Mr. Pycroft. I adhere
especially to the opinion expressed that
the necessary expenses of the Superintending
Committees should not be recoverable
from the Capital of the Religious Institutions;
that is by the sale of their real property;
if they possess any accumulated funded
property the expenses might be taken
from such a source with less inconvenience.

I retain an impression, however,
that the Bill is objectionable in principle
altogether and that it would prove to
be a fruitful source of controversies.

and resentments in the Societies which
it is intended to benefit.

If the Superintending Committees
really require pecuniary aid for the
necessary expenses of their offices I think
it would be preferable ^{to levy} a small limited
percentage on the ecclesiastical revenues
of the districts to which they severally
belong for the expenses of the Committees
with a provision that if the money
thus exacted should exceed the
wants of the Committees and accumulate
in their hands it should be reimbursed
from time to time to the Trustees for
the benefit of the Religious Establishments.

N^o

S. O. L.

7 Copies Despatch 30 May

28-12-75

30 May 1868

To Mr. F. H. de

I am directed to
acknowledge the re-
ceipt of your letter
of 24 ult. No 207,
regarding the Bill
to empower the Com-
mittees appointed under
Act No. 88 of 1863 for
the management of
religious endowments
to raise the cost of
expenses incurred in
the performance of
their duties from the
funds of the institu-
tions under their
superintendence.

In reply to the
question put in your
3d of June letter I am

but it is at the
put are ~~not~~ aware
that the difficulty ex-
perienced in raising
funds for the above
purposes having arisen
with regard to
para 4 of the pro-
posed bill I am obliged
to state that a letter may
be the doctrine of
St. James & Macdonald
law the put are de-
cidedly opposed to
legalizing the abor-
tation of the child
of a religious widow
I need to see the man
I need or for the pur-
poses can be plotted
in the bill which
you refer and be
certain that such a

method would be
revived by the same
community in the
overseas, & is trust
and alarm. The
legitimate & necessary
experience of the Com-
mittee to be moderate
and it is reasonable
that there should be
re-embarked to them
as far as this can be
done without detri-
ment to the trust
themselves. The best
plan would be to
make such expenses
recoverable in the form
of a rate after charge
on the annual income
of the trusts, after pro-
viding for the prescribed
ceremonies. The pro-
posed rather than leave
the office Committee to be

I don't think you know
A charge is to be made
20.00 per year - the way
it is might be
more economical
generally for
the annual income
W.D.

the experience of the
office that entrusted
them with the duties
of persons, as they
will possess of the
Bible to come law
As regards the
Bible the other pro-
visions of the Bible
the pit would be very
strongly represented
the in policy & in
Expediency of under-
ing the recovery of
demands on the part
of the Com. - Copied
in any form by
the Magistrate. The
revised Act (xx of
1863) ~~contains~~ the
settlement of all
disputes & questions
On the the

marriage went of the
religious endowment
on the Civil Tribunal
then placing religious
rights on the same
footing as other civil
rights. It is most
desirable that this
principle should
be adhered to strictly
and that the
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der consideration
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to the trust. In the
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& Magisterial functions
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with religious en-
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The Bill, as drawn,
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be too great & may

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the refusal of a trustee
to pay the demand
of a Com^{ee} may be
meritorious rather
than criminal - as
when an excessive
charge is made -

In Sect 2 of the
Bill, the fut^r would
define the character
of the "costs & expenses"
by some restrictive
expression - such as
"costs & expenses
necessarily incurred
in the legitimate dis-
charge" of the functions
of the Com^{ee}.

The fut^r would
also take advantage
of the opportunity
to amend Sect 4 of

The Act is for a
 bill after the
 taken necessary
 to amend the rules
 framed under
 it
James D. Smith
 Secy. of the
 Board of
 Education
 of the
 State of
 New York

12-12-10
8-10 PM

Reverie 1886. Dept
No of Govt from May

12/27/5.

To
The Government
of India
2730 May 1886.

Suggesting certain
amendments in the Bill
to Empower Religious
Committees to receive the
amount of expenses in-
curred in the performance
of their duties.

12/5/13 @ 5/15.