

*Friday,
1st March, 1901*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XL

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ABSTRACT OF THE PROCEEDINGS
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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at Government House, Calcutta, on Friday, the 1st March, 1901.

PRESENT:

His Excellency Baron Curzon, P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

The Hon'ble Major-General Sir E. H. H. Collen, G.C.I.E., C.B.

The Hon'ble Sir A. C. Trevor, K.C.S.I.

The Hon'ble Sir C. M. Rivaz, K.C.S.I.

The Hon'ble Mr. T. Raleigh.

The Hon'ble Sir E. F.G. Law, K.C.M.G.

The Hon'ble M. R. Ry. Panappakkam Ananda Charlu Vidia Vinodha Avargal, Rai Bahadur, C.I.E.

The Hon'ble Kunwar Sir Harnam Singh, Ahluwalia, K.C.I.E., of Kapurthala.

The Hon'ble Mr. J. Buckingham, C.I.E.

The Hon'ble Mr. H. F. Evans, C.S.I.

The Hon'ble Rai Bahadur B. K. Bose, C.I.E.

The Hon'ble Sir Allan Arthur, Kt.

The Hon'ble Sir A. Wingate, K.C.I.E.

The Hon'ble Mr. F. A. Nicholson, C.I.E.

The Hon'ble Mr. D. M. Smeaton, C.S.I.

The Hon'ble Mr. H. J. S. Cotton, C.S.I.

The Hon'ble Mr. C. W. Bolton, C.S.I.

The Hon'ble Rai Sri Ram Bahadur.

The Hon'ble Mr. R. P. Ashton.

INDIAN FOREST (AMENDMENT) BILL.

The Hon'ble SIR CHARLES RIVAZ presented the Report of the Select Committee on the Bill further to amend the Indian Forest Act, 1878.

CENTRAL PROVINCES CIVIL COURTS (AMENDMENT) BILL.

The Hon'ble MR. RALEIGH moved that the Bill further to amend the law relating to Civil Courts in the Central Provinces be taken into consideration.

The motion was put and agreed to.

[*Mr. Raleigh; Rai Bahadur P. Ananda Charlu.*] [1ST MARCH, 1901.]

The Hon'ble MR. RALEIGH moved that in the new proviso proposed to be added by clause 4 of the Bill the words "or parts of districts" be omitted. He said:—"The object of this Bill was explained on its introduction. The Bill has been referred to the Government of the Central Provinces and it has been approved: but the Divisional Judge of Nagpur points out that, under the proposed section 6, the civil division consists of one or more complete districts and that the words in the proviso 'or parts of districts' are unnecessary, and I move that the words be omitted."

The motion was put and agreed to.

The Hon'ble MR. RALEIGH moved that the Bill, as amended, be passed.

The motion was put and agreed to.

RELIGIOUS ENDOWMENTS BILL.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that the Bill to amend Act XX of 1863 (*an Act to enable the Government to divest itself of the management of Religious Endowments*) be referred to a Select Committee consisting of the Hon'ble Sir Charles Rivaz, the Hon'ble Mr. Raleigh, the Hon'ble Kunwar Sir Harnam Singh, the Hon'ble Rai Bahadur B. K. Bose, the Hon'ble Mr. Smeaton, the Hon'ble Rai Sri Ram Bahadur and the mover. He said:—"In placing before the Council the motion that stands in my name, I beg leave to make a few brief explanatory remarks.

"One proposal I have made is to do away with the distinction under which certain temples, mosques and other religious institutions fall under the control of the Committees and others do not. In other words, the difference that has been made between section 3 and section 4 must cease. That distinction proceeds virtually on the assumption that the thing to be safeguarded was, not the trust-property or the object worshipped, but the trustee, to whom—speaking strictly—they are merely confided. It looks as though the trustee had an inherent, inalienable and personal right, over-riding the claims of the object of worship and its endowments. It cannot be too strongly emphasised, I venture to think, that the public and the vast body of worshippers are interested in the question how the institutions are maintained and their property looked after—not in the question how a trustee derives or has derived his title. Yet the Act now in force has proceeded as if the latter of these questions was the paramount one. How this has come about is easily told.

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"In the early part of the century that has just expired, the then Government considered it a part of their duty to exercise control, more or less, over one and all temples, mosques and other religious institutions in the country as well as over all endowments for charity. To realise this one has only to read the preambles and the provisions of Madras Regulation VII of 1817, and the kindred pieces of legislation in other parts, and the judgment of the Madras High Court at p. 52, Vol. V of its Reports. For nearly a quarter of a century since then, I may say the strong arm and the vigilant eye of the local representatives of the Government were extended over, and were felt by, all the institutions, whether the nomination of the trustee was or was not in the hands of the Government. In the beginning of the forties which followed, a change came over the spirit of the Government—a change which was unfortunate so far as it regarded the interests of the institutions—a change, the cause and the motive of which it is as purposeless as unprofitable to dwell upon here. Suffice it to say that the change was prompted, neither by any notion of thereby advancing the good of the institutions nor by any revised or refined ideas as to the strict functions of the State. I wish I could give some extracts from the mass of correspondence which the change led to; but I do not propose to trouble the Council with them. I may, however, say this, that there are indications in that correspondence showing how the change of policy—at any rate, the expediency of it—was not readily acquiesced in by at least a few of the Government officers who were in close touch with the institutions and their worshippers and were thus capable of fully grasping the exact situation. It is worthy of note, in this connection, that, so far as I know, no complaint of any sort or kind on the part of the worshippers, or any persons representing them or claiming to represent them, was made to evoke or precipitate that change of policy. All other considerations were absolutely subordinated to the single idea which was in the ascendant, *vis.*, the idea that the Government and their officers should finally and effectually abdicate the attitude of that control which, as a fact, they had till then maintained. I, for one, have no quarrel with this stern and irrevocable resolve. I heartily approve of it. But the pity of it is that the Act which was to give effect to that resolve was not passed at once, but was delayed for over twenty years, *i.e.*, till 1863. If an Act was passed immediately when the change of policy was determined upon, the machinery, such as it is, which was embodied in the later legislative measure, would have, in all probability, embraced the supervision of nearly all of them or the bulk of them, as they were then under the actual control of the Government. But during the twenty and odd years which intervened, steps were executively taken which bereft some of the richest institutions of even the merest semblance of check and preventive control, such as

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the temples at Tripati and Trivellore. It goes without saying that, taking the average human nature for what it is, it is the inevitable tendency of unchecked freedom to fast degenerate into unbridled license. The aim of my proposal in question is to minimise, if not to neutralise, the disastrous results that have followed and to make better provision for the future. I have no sympathy with those who talk of vested interests in matters of this sort. If there is one office more than another, whose retention is or ought to be dependent on good behaviour, it is, I venture to think, the administration of sacred institutions. As I have had repeatedly to say, there can be no vested interest in doing wrong.

“The only objection, with an air of seriousness, which has been urged against my proposal is that many a zamindar or rich land-holder is the trustee of temples within his estate, and often spends his own money, over and above their income, and that it would be both wounding his dignity and doing him wrong to subject him to supervision of persons, much his inferiors. I know there are many zamindars who are all they ought to be and who are laudably open-handed as above described. Being what they are, they should be foremost (I should imagine) to cast aside the false pride imputed to them and offer their accounts for outside and authorised scrutiny, thus setting an encouraging example to the black sheep in their class and to all other less scrupulous men. To such of them as hanker after advertisement, this would perhaps be an excellent, annual celebration of their disinterested generosity. But I am afraid the plea of outraged dignity is too often a cloak to conceal deformities which cannot bear the fierce light of day; while the so-called inferiority of auditors and examiners of their accounts is utterly irrelevant when it is remembered that no question of social status can arise as to persons who are legally authorised to do a legal duty. I know too much to admit that the average zamindari human nature is, in any essential respects, different from ordinary human nature; and if an open door, as the adage says, would tempt a saint, it would tend no less to tempt the rich and the clever who may have the chance to draw but a mathematical line between *meum* and *tuum*. Even the apologists for the zamindars seem, after all, to concede that it would have a salutary effect, if they were called upon to render to the Committees periodical accounts, by which, I take it, those accounts should be liable to be sifted and audited. I have virtually asked for no more. Such being the true state of the case, it is for Your Lordship and my Hon'ble colleagues to say whether the distinction I wish to see abolished should or should not endure. I am aware that an interested outcry has been raised by those who have the handling of the trust-funds. But it is significant that they are not backed up by the vast mass of worshippers, and that such would doubtless be the result in case such as finger the trusts had their sympathy and sup-

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port. As for their not having flooded this Council with petitions, mahzarnamas and other representations in favour of the changes I have proposed, I do not wish that the bad lesson should ever be learnt that, even in Councils constituted such as this, sound arguments could not prevail unless supported by an outside multitudinous re-echo. I think I have a right to lay stress on the fact that, while there is no popular dissent from the proposals have made, five experienced Judges of the High Court of Calcutta and—barring a few who are naturally wedded to proposals which they themselves were incubating—nearly all representative Hindus who have spoken of my proposal have accorded to it their general approval. For all I have said, if it is the sense of this Council to let the matter alone in respect of the particular proposal,—owing to the outcry in question or on any other grounds,—I am quite content not to press it.

“ My next proposal relates to the constitution of the machinery, which was substituted by the Act now in force, *i.e.*, Act XX of 1863, for the controlling hand of the Government thence withdrawn. To constitute two or more Committees in each district once for all and to hand over to those Committees certain of the institutions (*i.e.*, those falling under section 3) and their entire property (moveable and immoveable) was an initial duty laid on Local Governments under section 7. This was as it should be. In the choice of members of such Committees, the Local Governments were directed to bear two points in view, *vis.*, (1) that the members selected should belong to the same religion as the one to which the institution belonged which they were to manage, and (2) that, in making the choice, the Government should, as far as possible, be guided by the wishes of the worshippers concerned. To ascertain such wishes, an election, if need be, was to be resorted to. All this is excellent enough, and I take no exception to any part of it. I shall assume, for the purposes of my Bill, that this initial duty was fulfilled all round in the amplest degree and in the best possible manner. But the Local Governments were no longer to concern themselves with the institutions from that date. The Act had, therefore, to provide for filling up of vacancies which must, from time to time, occur. The provision it enacted was that it must be by election, and that Local Governments should make rules for the purpose, including obviously the questions of who should elect and what qualifications the electors should possess. Having regard to the lapse of a generation since the Act was passed or since the Local Governments made rules in that behalf, and seeing that the system of election has received a wider application and greater development than at that time, I have in my Bill drawn up a scheme, to secure uniformity, on the lines on which electorates have been constructed for other purposes. By this I have, I find, brought a hornets' nest about my ears. I

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come face to face with an infinite diversity of destructive criticism, often mutually hostile, and with the touch-me-not attitude of the sensitive plant on this point; and I see little trace of any desire to suggest an alternative plan, illustrative of constructive, architectural skill. One piece of delicious criticism I have come in for by remembering previous pronouncements of the Government of India and by taking care not to clash with them, is too good to go unnoticed; for, it seems that, by excluding all the executive officers of Government from participating in the management, I have cast a deliberate and unmerited slur on those officers. This is a fair sample of the degree of mastery of prior literature with which my Bill was approached. I take no note of those who have a chronic dislike and a nervous horror for such words as 'election' and 'electorate' as applied to this country. I cheerfully agree to disagree with these, as it is perhaps no more their fault that their minds are non-receptive for the ideas suggested by these words than it is my fault that my mind is open to them. But I think that it is rather a pity that the objectors had not perceived that it was *the Legislature of 1863* and not my 'impudent' self with whom the idea of election for this purpose really originated. If only men, prepared to tilt at me, had done me the kindness of comparing my schemes with the systems of election devised under the Temple Act,—notably the one by the Government of Madras,—there would have been very little to anger them; only I have not given prominence to pecuniary qualifications, though I unmistakably and inclusively implied them—a course I thought it necessary to take in the interests of orthodox classes with whom I have been in full touch and whom I should be the last to hoodwink or embarrass. Subject to this single feature—defective only to outward seeming—my plan for constructing an electorate is, I venture to think, just as faultless as anyone else may suggest. If, therefore, the fulminations of the out-and-out foes of election are all the obstacle in my way, I would certainly not mind it, but press my proposal nevertheless. There are other reasons why I should leave it to a future time; and I know how other action may be taken to seek effect being given to it without meddling with the imperial Act XX of 1863. I do not therefore desire to urge it if it is the sense of the Council that this also must be, for the present, left alone. With this is bound up my scheme of a Central Committee, meant to minimise the need for recourse to Courts.

"Quite apart from the foregoing proposals and absolutely unconnected with them are two other proposals of mine, on which I am particularly keen. One of them is that members of the Committees under the Act should hold their places for a term of years and not for life. As to the wisdom and expediency of this course, we have had quite recently Your Lordship's most

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authoritative pronouncement in matters connected with the direction of the University. I venture to think that the administration of the enormous funds which belong to the religious institutions of the country is not a less onerous function. With the powers of the Committee increased, as I shall presently suggest, very many capable and pious men would be glad to devote a few years of their life to the honorary work of looking after the affairs of their religious institutions as many have been ready to serve on the Municipal and Local Boards. But they would be deterred if they were to be tied down to those institutions all the days of their existence.

"It may well be that the hope and prospect of getting rewards in the way of titles from the Government for good work on Municipal and Local Boards play an important part, as a friend of mine shrewdly observed to me. I nevertheless think that the consciousness of power to work with advantage and the satisfaction of winning the good opinion and well-merited praise of the mass of pious worshippers, who now stand aghast at their utter powerlessness, would afford a strong enough motive, besides the sure prospect of the trustees themselves being under a wholesome fear and improving, in the presence of a right in the Committees to interfere effectively, which is now absent. These observations are, I trust, enough to commend this proposal to your best and earnest consideration.

"There is but one other proposal of mine on which I am anxious to secure the sympathy and approval of the Council. It is my proposal to enlarge the powers of the Committees under section 13 of the existing Act. To my mind, it is the most important one, and—be it noted—that it does not, in the slightest degree, trench upon the principles of the Act. That section makes it, indeed, the duty of every Committee and every trustee severally to keep regular accounts of receipts and disbursements of every institution. But, beyond saying that the Committee 'shall require the production by the trustee of his accounts at least once a year,' the powers go no further in terms. Could the Committee hold an enquiry and enforce the attendance of the trustee to clear up doubts? Could they call upon him to produce proper vouchers? Could they, if they found it necessary, compel witnesses to attend? It is by no means clear that they can do all or any of these things, unless we strain—overstrain I might well say—the word 'require' in the section, in order to evolve all this. No Court, so far as I remember, has done so, nor do I think any Court would. Suppose, for argument's sake, it is granted that minds, accustomed to financial study, could detect these powers in the word 'require' and in the further word 'manage' used in connection with the Committee; still I do think that

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Charles Rivaz.]

the harmless superfluity which I plead for might well be granted as elucidatory instead of driving people to costly and hazardous lawsuits to evoke a judicial interpretation, if only to remove doubts from lay minds and to instil a deterrent fear in the would-be recalcitrant. Such legislation is not uncommon. I need hardly add that by legislation in these respects we shall still be scrupulously within the intentions of the Act, and not swerve from them by so much as a hair's breadth.

"The income, it is perhaps not widely known, is very often derived from varying voluntary contributions in the shape of numerous dribbles from casual, not regular, worshippers, chiefly on certain festive days or days of celebrations. But it is under the head of expenditure that frightful room would exist for palming off unexpended or fictitious sums as spent. Expenditure would necessarily fluctuate, and the one check which common prudence has recourse to is to form a previous forecast or budget in most affairs of life and in all administrative systems. This every trustee may be required to do and obtain the Committee's prior sanction. It will go a long way to minimise fraud.

"To subject the accounts of both the Committees and the trustees to a system of outside audit would carry success much further. This, I imagine, needs legislation which also would not trench upon the principles of the Act.

"There are other points in my Bill which are comparatively of minor importance. As they do not go to the root of any of my cardinal proposals, if I may so say, I venture to think that no remarks need be made on these at this stage.

"Struck by glaring instances of fraud as regards charities which are supposed to be still under the check of Madras Regulation VII of 1817 and kindred Regulations, I brought charities also within the purview of my Bill, though there was the oversight on my part to describe my Bill as an amendment in that respect also. As it is a large question by itself and outside the Act relating to temples and the like, I prefer, on second thoughts, to leave it out of my Bill. With these remarks, and the repudiations I have made in course of them, I beg to move that the Bill be referred to the Select Committee above-named."

The Hon'ble SIR CHARLES RIVAZ said :—"When my Hon'ble friend introduced his Bill in this Council in March, 1897, His Honour the present Lieutenant-Governor of Bengal, who was then the Member of Council in charge of the Home Department, said that, while the Government of India consented to the introduction of the Bill, it must be distinctly understood that they were not a party to it. He proceeded to say that the Govern-

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ment had laid down the principles of its relations to religious endowments in Act XX of 1863, and that it adhered to those principles. He remarked that the Bill was in the main an endeavour to secure through the existing non-official Committees a closer control of the management of those endowments, but that was an aim which could only be successfully prosecuted should it appear that it had the general support of those interested and that the Government reserved to itself the absolute right to oppose the Bill, if that appeared expedient in its later stages.

"The Bill was accordingly circulated for opinions, but met with a distinctly unfavourable reception from all the Local Governments and Administrations. The Bombay Government expressed a strong opinion that legislation to the effect proposed by my Hon'ble friend or any legislation for a similar object was, so far as the Bombay Presidency was concerned, unnecessary and undesirable, that the existing law provided a sufficient remedy for any grave or palpable abuse, that there was no evidence that the proposed law was desired in the Bombay Presidency by any class of people, and that it would almost certainly create great discontent and engender widespread suspicion of the motives of the Government. The Bengal Government stated that the replies received from its local officers showed that the proposed legislation was not desired by the great body of those whom it would affect, that the Muhammadan community was unanimously opposed to it, that, as regards the Hindus, only the small minority represented by the educated classes were in favour of it, and that there was nothing to show that the present law, if resorted to, did not afford a sufficient means of remedying such abuses as existed. The North-Western Provinces Government said that the weight of the opinions which it had taken was against the Bill as being unnecessary and unworkable, that it would probably be considered as an unwarrantable intrusion by Government in religious affairs and would excite serious opposition. The Punjab Government replied that the proposed measure appeared to be quite unsuited to that Province, and would probably give rise to an immense amount of ill-feeling and discontent. The Burma Government said that the general local opinion, in which the Lieutenant-Governor agreed, was that the Bill was not suitable to or required in Burma. The Chief Commissioner of the Central Provinces reported that the matter was of little importance as regards the territory under his jurisdiction, such religious institutions as exist in that part of India being generally small and of little repute or resort, but that he did not think it would be possible to organize the Central and District Committees contemplated in such a way that their decisions would command public confidence among the religions and sects affected. The Chief Commissioner of Assam while thinking that it must

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be admitted that the best educated native opinion is in favour of the Bill, and that there is much to justify it, since it is hardly too much to say that religious endowments in India are, as a rule, grossly mismanaged, went on to remark that the evil which it was sought to remedy was very deeply seated, and there was great danger that the cure proposed might be worse than the disease. His conclusion was that it would be highly inexpedient to extend any legislation of the proposed nature to Assam. Lastly, the Madras Government expressed a strong opinion against the Bill on the ground that the wide scope of the proposed enactment, which purported to apply to all non-Christian religions and charitable endowments throughout the whole of India, subject only to a limitation in regard to petty institutions, constituted a fundamental and fatal objection to it. They followed up this condemnation of my Hon'ble friend's Bill by sending up a Bill of their own which was intended to provide for the better protection of Hindu religious endowments in the Madras Presidency, but the Government of India declined to accord sanction to its introduction into the local Legislative Council.

"The only other opinion on my Hon'ble friend's Bill which I need mention is that of the Calcutta High Court. Five of the Judges expressed an opinion that the system suggested in the Bill should be given a trial, two of the Judges disapproved of it, another Judge said that it had been framed without sufficient consideration of the conditions and requirements of Muhammadan endowments, and the Hon'ble the Chief Justice expressed his doubt as to the expediency of the Bill.

"In the face of this preponderating mass of adverse opinion, it is obviously impossible for me to consent, on behalf of the Government of India, to my Hon'ble friend's Bill being referred to a Select Committee. He has expressed his willingness, it is true, to accept a condition of modifying some of its present provisions, but even on this understanding I am unable to agree to my Hon'ble friend's motion, because reference to a Select Committee would practically commit the Government of India to the consideration and probable passing of a measure which, whatever modifications it might receive in Committee, has been framed on lines which are opposed to their declared policy in the matter of religious endowments. This policy is enunciated in Act XX of 1863, and the Government of India, in refusing to countenance the Bill sent up by the Madras Government to which I have just alluded, declared its inability to sanction any proposal to revise the procedure or alter the principles embodied in that Act in any material way, and further expressed an opinion that the existing law affords ample facilities, if those interested choose to employ them, for obtaining an adequate remedy from the

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Civil Courts against dishonest trustees. If my Hon'ble friend finds himself able at any time to frame a Bill which will improve the procedure prescribed by Act XX of 1863 without interfering with its main principles, well and good. The Government will be quite ready to give it favourable consideration. But the present Bill does not fulfil this essential condition, and I cannot therefore consent to its being further proceeded with."

The Hon'ble RAI SRI RAM BAHADUR said :—"My Lord, after the speech of our colleague the Hon'ble Mr. Charlu, in which he has dealt with the subject so ably and exhaustively, and also the speech of the Hon'ble Home Member placing the views of the Government before this Council, I am rather afraid that the support I am going to give to the motion of the Hon'ble Mr. Charlu will not be of much avail. But, with Your Excellency's permission, I beg to offer a few remarks in connection with the question now before the Council.

"The law relating to management and control of religious endowments, as found in Act XX of 1863, is defective in many respects. The Act has now been in force for a little less than four decades, and many shortcomings in its different provisions have been found out in the course of their actual application. The machinery provided by it for the control of religious endowments is not capable of effective and smooth working, and the result is that the funds are misappropriated and misapplied, and property is wasted by the trustees without any proper check whatever.

"I find that in the majority of the opinions submitted by different individuals and public bodies, on the Bill now before the Council, the facts of mismanagement of many of the religious endowments and the misapplication of their funds are admitted. The question is whether these evils should not be removed by a more effectual legislation than the one we have got at present. The non-intervention policy of Government with religious and charitable endowments has been departed from in cases of necessity. I can give at least one instance from my Provinces ; I mean the Husainabad Endowment Act which was passed by this Council in 1878 to control the management of a religious and charitable endowment created by one of the Kings of Oudh.

"But the motion at present before the Council as made by my Hon'ble colleague Mr. Ananda Charlu is of a very limited character. He has confined it now to the modification of, and addition to, two sections of Act XX of 1863. That Act stands as a piece of legislation in force in our Statute-book. The amendments pressed by our Hon'ble colleague, without in any way trenching upon the principles of the Act, will certainly lead to its more effective working.

"With these remarks I beg to second the motion."

[*Mr. Bolton.*]

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The Hon'ble MR. BOLTON said :—" My Lord, I desire to add some remarks to those which the Hon'ble Sir Charles Rivaz has addressed to the Council in opposition to this motion. The motion is in terms ordinary and formal, but in substance of great importance. The Hon'ble Mover is acting in exercise of a right in inviting us to refer to a Select Committee a Bill which he obtained leave to introduce in a past session, however distant, but he doubtless recognizes that the mere introduction of a Bill does not imply its eventual reference to a Select Committee. Such a reference is contingent on the approval of the principle of the measure, and it is that question which gives the present motion its importance. The issue before us—and it is manifestly of great significance—is this, whether the Council should identify itself with a proposal to establish a quasi-official control over religious institutions which the people themselves have hitherto preferred to leave without such interference.

"In coming to a decision on that issue the Government and the Council must be guided by both public and official opinion, as they are guided in respect of every Bill which is submitted to their judgment. This opinion has been sought and obtained from all parts of India, and it is adverse to the Bill. The reports which have been received agree, with rare exceptions, in deprecating or strongly opposing the proposed legislation. The exceptions are mainly found in the views of individuals and a few associations representing the most advanced section of the educated classes, whose opinion on a religious matter, be it said without disparagement, is not valued by the orthodox members of their faith, and cannot claim weight with the Government. This is no less the case in Bengal than elsewhere, and, speaking of this Province, I entertain no doubt that opposition to the Bill is strong and uncompromising outside the limited class to which I have alluded.

"Briefly, the Bill proposes to establish District Committees and a Central Committee for the control of religious and charitable institutions belonging to all non-Christian religions, and it differs from the Act which it purports to amend in this very material respect that it proposes to substitute general Committees for entire districts for Committees controlling the management of single endowments. Without entering into details, I may note that it associates the District Judges, who are mostly Europeans, with the formation of the Committees, that it proposes a system of electing the members of the Committees which is likely to bring into conflict the sects within the different religions, and that it overlooks the obstacles to the control of many of the endowments by a general Committee which are presented by usages and customs having religious force, and, therefore, immut-

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able. These are features of the Hon'ble Member's scheme which could not be removed in Select Committee without radically modifying the Bill, if, indeed, any other workable scheme could be devised; and they must be present to our minds in voting on this motion. We must take the Bill as it stands and have no regard to possible changes which would alter its whole principle.

"What, then, do we learn, for guidance, from the opinions which have been expressed on the Bill in its present form? We find that Hindus and Muhammadans alike have strongly protested against the interference with their endowments which it would set up; and we have the warning that any countenance given by the Government to such legislation, and especially the vesting of the District Judges with the duty of forming the electorates for the District Committees, would raise the general suspicion of an insidious attempt to interfere with religion, notwithstanding the patent fact that such interference has been always foreign to the wish of the Government, and would create grave discontent. This apprehension is unquestionably well-founded. No cry, we are aware, is more easily excited than that of danger to religion. None, again, is more dangerous politically and more difficult to allay, and against none should the Government more prudently guard. The decision of the Government of India to oppose progress with this Bill must, therefore, commend itself not only to this Council, but also to the great mass of the people throughout the country. It may be conceded that serious abuses exist in the management of many religious endowments, and the Hon'ble Mr. Charlu is entitled to credit for an endeavour to remedy the evil; but it is clear that the difficulties in the way of legislation are enormous, if not insuperable, and that the Government cannot be fairly and reasonably pressed and expected to accompany the Hon'ble Member into a position which would provoke religious ferment throughout India.

"A remedy for individual cases of mismanagement is available in the provisions of section 539 of the Code of Civil Procedure, which authorise applications to the Courts for the appointment of new trustees and the settling of new schemes of management; and the Government may legitimately point to those provisions as ample justification for refusing to give its support to fresh legislation of the present character. It rests with the people themselves to make use of the power which they thus possess of enforcing proper management of religious and charitable trusts. The provisions of the section, it may be mentioned, have been successfully appealed to in the past.

"For these reasons I join the Hon'ble Sir Charles Rivaz in opposing the motion before the Council."

[*Mr. Smeaton.*]

[1ST MARCH, 1901.]

The Hon'ble MR. SMEATON said:—"As the Hon'ble Mr. Charlu has done me the honour of nominating me on the Select Committee, I think it due to him that I should state my reasons for not being able to support his motion that the Bill be referred to a Select Committee, and for agreeing with the remarks of the Hon'ble Sir Charles Rivaz that the Bill should not progress further. While I concur in most of the remarks that have been made by both the Hon'ble Sir Charles Rivaz and the Hon'ble Mr. Bolton, I equally sympathise with my Hon'ble friend Mr. Charlu, inasmuch as I think the Government, as the successor of the Hindu, Muhammadan and Buddhist Sovereigns, is under an obligation to take every available means to ensure the proper management of the vast funds which are devoted to religious and charitable endowments. I think, however, that the proposals of the Hon'ble mover are not such as are likely to accomplish the ends which he has in view; and, moreover, I think that some of them are likely to be exceedingly inconvenient and possibly hurtful. In the first place, I notice that in section 3 the Committee, such as is contemplated by Act XX of 1863, shall prepare what the Hon'ble mover calls an electorate. The body contemplated here is the Committee which succeeded to the powers and responsibilities of the Board of Revenue, whose duty it had been to administer the funds of all the religious endowments within its jurisdiction and see that they were properly appropriated. This Committee, who succeeded to the powers of the Board of Revenue, was in fact a Committee which took cognizance of the funds of all religious institutions within the district to which it related. In other words, the powers exercised were without regard to the particular religion or sect concerned. So that, if the proposals under section 3 of the Hon'ble Member's Bill were to be carried out, we might have a committee of Hindu laymen and priests making a list of the electorate which was to govern the affairs of Muhammadan, Buddhist, Jain and Parsi endowments in the district. That, it seems to me, would be very likely to cause friction and discord among those sects and religions, who might, with some reason, resent the interference of a Hindu Committee with their affairs.

"The next matter in which I cannot agree to the Hon'ble mover's proposals is this: section 3A proposes to establish an electorate of notables, and this electorate is to select a District Committee and a Central Committee, and these two Committees are to be absolute in their power over the endowments with which they are concerned. Section 12 of the Bill runs thus:

'The District Committee of each religion or sect shall have absolute control, not inconsistent with their maintenance, over the institutions belonging to that religion or sect, including the appointment of the trustees, according to the custom prevailing in each institution as vacancies shall occur after the passing of this Act.'

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· *Mr. Smeaton.*]

"Section 13 prescribes a budget : section 14 empowers the Committee to revise the budget as it sees fit.

"And then section 16 runs thus :

'The orders of the District Committee shall be appealable to the Central Committee, whose decision shall be final.'

"In respect of this extraordinary absolute power and finality, particularly in the administration of funds, I can only say that my experience of the administration of funds by a Committee of notables is very much against the propriety of such a proposal. The only case I can at this moment recall is where a Committee of notables in a secular endowment managed the affairs of a large irrigation scheme. This Committee managed to irrigate all their own lands and pay very little rent, whereas the large majority of the poorer cultivators got very little of the irrigation and paid a very large proportion of the rents. I doubt very much if even a Committee of persons living in the odour of sanctity would be likely to avoid the temptation of possibly acting in a similar way. But the objection which to me appears to be most fatal is this: the Act applies not only to strictly religious but also to charitable endowments. Now in the province with which I am connected at present I imagine that the monasteries and dependent schools would fall under the category of religious and charitable endowments. If in the case of those monasteries, and more particularly the schools dependent on them, we are to have under sections 12 and 16 this absolute control by Committees of Buddhist notables, I very much question whether that control would be likely to operate to the advantage of those who attend the schools or to the people. Your Excellency may be aware that until recently the tendency of the superior ecclesiastical authorities in Upper Burma was distinctly averse to anything like the introduction of a liberal element into the education given in the primitive monastic schools of that province. If these triumvirate Committees—who would naturally be imbued with the prejudices of the ecclesiastical authorities—are to have absolute control over these foundations, I very much question whether the efforts of Government to introduce a liberal element into the education given to the boys of those schools would be likely to be successful; and therefore I think that the proposal to vest these absolute powers in the District and Central Committees, in respect so far at least as these monasteries and dependent schools are concerned, would be most unwise. This being my interpretation of the powers given to the District Committees under the two sections 12 and 16, I think that even on that ground alone I should be justified in opposing the further progress of the Bill."

The Hon'ble MR. RALEIGH said:—"My Lord, as this Bill was introduced before the beginning of Your Lordship's administration and long before I had a seat in this Council, I thought it right to ask my Hon'ble friend the mover of the motion for explanations with regard to his proposal, and these explanations he has very freely furnished me, and I desire to acknowledge the reasonable spirit which he has displayed in discussing the provisions of this Bill. I pointed out to my Hon'ble friend the difficulty which would occur to any practical person on reading the text of the Bill. The difficulty is of this nature: that when you are dealing with the ancient religions of India, you are not dealing with a people organised into a certain definite number of churches submitting to a certain limited number of authorities who represent them for all practical purposes, but you are dealing with very large bodies of persons imperfectly organised, united in belief and worship, but at the same time divided by differences which have often been the cause of the most serious anxiety to those who are responsible for the maintenance of order in this country. Some of the most serious troubles we have had have been due not to the conflict between one religion and another, but to the conflict between sects within the limits of one religion. When you propose out of elements of this kind to constitute an electorate under the auspices of a British Magistrate and to give to elected committees large powers of interference, obviously there is the danger that these Committees may be used by one sect against another, and thus may lead to differences so serious as to require the intervention of the Government. My Hon'ble friend has expressed his approval of the policy of 1863, when the Government endeavoured as far as possible to divest itself of responsibility for religious endowments. If we established anything like the system which the Bill proposes, we should have the responsibility of the Government restored and rendered more direct. There is not only the danger, which the Hon'ble Member has pointed out, of wounding the dignity of zamindars and other important persons who have undertaken the management of these endowments. There is the far greater danger of interfering with the mohants, and others who are invested not only with dignity but sanctity among large numbers of their countrymen. I found to my surprise and relief that there was less difference of opinion than one might have supposed between my friend and myself on points of this kind, and, so far from curling up like the sensitive plant to which he has compared himself, my Hon'ble friend met my questions boldly and fairly admitted some of them were difficult to answer. Finally, he asked me to consider whether, supposing he were willing to abandon those parts of the Bill upon which my criticism chiefly turned and were to retain merely the two important—not all important—amendments in the Act of 1863 to which he has

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referred, namely, the election of Committee men for a limited term and the extension of the powers which a Committee may exercise, whether the Government would be prepared to allow the Bill to go into Select Committee. Subject to any ruling which Your Lordship may give on the point of procedure, I venture to submit that this is not what Committees are intended for. When we send a Bill to Select Committee, we accept the Bill generally subject to that revision in detail which the Committee is able to give it; but I think it would be a bad precedent if we were to accept a Bill which, on the face of it, raises very large and difficult questions, and send it to Select Committee with the avowed object of having the whole substance of the Bill left out, and the Bill turned into one merely for amending two or three points in the Act of 1863. I may say that even the proposal to amend that Act would raise difficulties which would have to be carefully considered. I have no hesitation at all in supporting the Hon'ble Sir Charles Rivaz in saying that the Council ought not to allow this Bill to be referred to a Select Committee."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"Reference has been made to an opinion represented on the West Coast of Bombay, that so far as that part of the country is concerned, the Bill is unnecessary. As this happens to be an Imperial Act, it is impossible to alter it so as to make it useful for certain parts and not for others, unless the Act is made declaratory and it is left to the Local Governments to extend it if they consider extension necessary. It is, I believe, equally open to the Select Committee, if this comes before them, to make that recommendation.

"Now, as to the interference to which reference has been made in several of the opinions given, I need not reiterate what I have stated already, because in no part of my Bill is there an attempt to interfere with the principles laid down in the Act of 1863. I must, however, point out this one thing. If that is considered an interference, even that is capable of being dealt with as being antagonistic to the principle of the Act, and therefore one that ought to be rejected. I say that may be done by the Select Committee, and that is the constitution by way of innovation of the Central Committee which is not contemplated in the Act which I have asked to be modified. An opinion has been stated that the evil does exist, and that it is deep-seated. Well, if the evil exists, it must be attacked, and if deep-seated, the way to deal with it is not by holding our hand altogether. It has been pointed out that the Bill is very wide, so wide as to embrace the charities. I have already explained about the end of my observations why I introduced it in

[*Rai Bahadur P. Ananda Charlu.*] [1ST MARCH, 1901.]

the first instance, and why I consider that it was not proper to retain that part of the Bill untouched. Therefore, all the objections pointed out by the Hon'ble Mr. Smeaton on the ground that it was so wide that by reason of the width of it, it was not capable of being properly worked, fall to the ground.

"Then the Hon'ble Mr. Bolton has taken four objections. The first is that under the Bill there would be a kind of quasi-official control. I am sorry to have to point out that no part of my Bill aims at it, or asks for it. The interference on the part of the District Courts and of District Judges which I have invoked in my Bill is only in such cases in which defaults occur, and for which Act XX of 1863 makes an exactly similar provision. I have not asked the District Courts to exercise one single scintilla of more control than it is open to them to do under Act XX of 1863. Therefore, my Bill it has no sort of quasi-official character about it, and its reference to District Judges does not make these Judges do more than what the existing Act does. Then it is said that the agitation is mainly by the educated and not the orthodox classes. That the voice of the educated classes is heard is beyond all doubt, but that they alone feel the injury is not correct; but it will be absurd to go further. For instance, that on the important question, namely, when a trustee says he has spent Rs. 1,000 on a particular festival, whether he had actually spent Rs. 1,000, or only spent Rs. 500 and put the remaining Rs. 500 into his own pocket,—I do not know that the orthodox classes and the educated classes would differ from each other. The great object of my Bill is to prevent misapplication of funds. If, for instance, on a particular festival a trustee is in the habit of spending Rs. 1,000, I do not say and nowhere in my Bill do I wish it to be understood that that amount ought to be refused; but all I want is that it should be shown that the Rs. 1,000 have been spent. I do not think a single member of the orthodox classes would differ from me in the expression of that request. He will say, just as I do, that the trustee ought to show that he has spent the Rs. 1,000 when he says he has spent Rs. 1,000, and that he ought not to spend Rs. 500 and put the remaining Rs. 500 into his pocket. That is the question here; and in a matter like that, to say that the interests of the orthodox and the educated people—as if there were an antagonism between the two—are opposed, is to state what is not correct. It may be that in the adherence to certain ceremonies and so forth the orthodox people and the educated people may differ, but upon the question of the important points of religion they do not. The point, relevant here, is, whether money has been properly applied or not—whether the account is correct or not. That has nothing to do with orthodoxy or heterodoxy, and it seems to me therefore that, the great object of my Bill being to keep the trustees straight in their dealings with a fund not belonging to them, there is, and there can be, no antagonism between

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the opinions of the orthodox people and the educated classes, who, I hope, it will never be denied are also orthodox classes.

"Then again the Hon'ble Mr. Bolton has referred to the long standing usages under which succession takes place to the trusteeship. It looks as if he considered that my Bill in some sort of way wanted to divert the succession. I do not intend anything of the sort. If the part of my Bill dealing with the question is taken into account and carefully examined, it will be found that I take care to say that all the usages shall be followed and observed strictly, and that every trustee shall get his office in the way he has been getting it all along, and that neither the District Committee nor the Central Committee will have anything whatever to do to twist the right of that person from his proper course.

"These seem to me to be the observations necessary for the purpose of showing that there is not against my Bill that outrageous and prodigious objection that is believed to exist against it; but, at the same time, seeing that the Government are not in favour of referring it to a Select Committee, and as the Hon'ble Sir Charles Rivaz has been good enough to say that if the points upon which I said I am keen and the like are presented in a subsequent Bill, that Bill will be considered, I thankfully accept that explanation; I also thankfully accept the terms in which I have been referred to by the Hon'ble the Legal Member. I do not therefore wish to ask for a division on my motion."

His Excellency THE PRESIDENT:—"Does the Hon'ble Member wish to withdraw his motion?"

The Hon'ble MR. ANANDA CHARLU said that the withdrawal of his motion would naturally follow from his speech.

His Excellency THE PRESIDENT:—"It is for the Hon'ble Member to say if he wishes to withdraw his motion. If he does, I will ask permission of the Council for it to be withdrawn. If not, I must put the motion to the Council in the ordinary way."

The Hon'ble MR. ANANDA CHARLU said he would ask leave for his motion to be withdrawn.

The motion was accordingly withdrawn.

The Council adjourned to Friday, the 8th March, 1901.

CALCUTTA; The 6th March, 1901.	}	J. M. MACPHERSON, <i>Secretary to the Government of India, Legislative Department.</i>
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