[File No.
$$\frac{R}{160}$$
G. of 1915.]

ASSAM SECRETARIAT.

GENERAL DEPARTMENT.

REGISTRATION-A.

January 1916.

Nos. 1-18.

Instructions from the Government of India that Marriage Registrars be warned to exercise care in observing the provisions of Act XV of 1872, Indian Christian Marriage Act.

REFERENCES TO FORMER CASES.

Department, date, and Nos., or File No. and year. Brief Title of File. Nil.

REFERENCES TO LATER CASES.

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(To be continued on back, if necessary.)

PAPERS OTHER THAN PROCEEDINGS.

I .- Printed.

Notes and orders.

11.-Not printed.

(Original.)

[FILE No. R-160G. of 1915.]

1916.

ASSAM SECRETARIAT.

GENERAL DEPARTMENT.

REGISTRATION-A.

JANUARY.

Nos. 1-18.

Instructions from the Government of India that Marriage Registrars be warned to exercise care in observing the provisions of Act XV of 1872, Indian Christian Marriage Act.

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NOTES.

REGISTRATION-A, JANUARY 1916.

Nos. 1-18.

Instructions from the Government of India that Marriage Registrars be warned to exercise care in observing the provisions of Act XV of 1872, Indian Christian Marriage Act.

From the Secretary to the Government of India, Department of Education, No. 570, dated the 22nd—29th November 1915.

Under-Secretary,

We may send a copy of India's letter, and enclosures, to the Registrar General of Births, Deaths and Marriages, Assam, for information and necessary action. A draft memorandum for approval. The Commissioners will receive copy from the Registrar General.

C. D. Sarma—16th December 1915.

Secretary II,

Perusal.

17th December 1915.

N. E. PABRY.

Chief Commissioner,

Perusal.

17th December 1915.

18th December 1915.

A. W. BOTHAM.

A. E[ABLE.]

TO THE REGISTEAR GENERAL OF BIRTHS, DEATHS AND MARRIAGES, ASSAM, No. 7968G., DATED THE 22ND DECEMBER 1915.

[FILE No.
$$\frac{R}{160}$$
G. of 1915.]

ASSAM SECRETARIAT.

REGISTRATION-A.

January 1916.

Instructions from the Government of India that Marriage Registrars be warned to exercise care in observing the provisions of Act XV of 1872, Indian Christian Marriage Act.

FROM

THE HON'BLE MR. H. SHARP, C.I.E.,

Offg. Secretary to the Government of India,

To

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.

" SECRETARY TO THE GOVERNMENT OF BOMBAY,

GENERAL DEPARTMENT.

,, SECRETARY TO THE GOVERNMENT OF BENGAL,

GENERAL (ECCLESIASTICAL) DEPARTMENT.

- " CHIEF SECRETARY TO THE GOVERNMENT OF BIHAR AND ORISSA.
- ,, CHIEF SECRETARY TO THE GOVERNMENT OF THE UNITED

PROVINCES

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" SECRETARY TO THE GOVERNMENT OF THE PUNJAB,

Home (Ecclesiastical) Department.

" SECRETARY TO THE GOVERNMENT OF BURMA,

GENERAL DEPARTMENT.

- ,, HONOURABLE THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES.
- " HONOURABLE THE CHIEF COMMISSIONER OF ASSAM.
- " CHIEF COMMISSIONER OF COORG.
- " CHIEF COMMISSIONER OF DELHI.
- " HONOURABLE THE CHIEF COMMISSIONER AND AGENT TO THE GOVERNOR-GENERAL, NORTH-WEST FRONTIER PROVINCE.

101.

Department of Education. Ecclesiastical.

Delhi, the 22nd November 1915.

SIR,

I am directed to forward for the information of the Lieutenant-Governor in Council the Lieutenant-Governor in Council His Honour the Lieutenant-Governor your information

the enclosed copies of correspondence which has taken place between the Bishop's Chaplain, Calcutta, and the Government of India on the subject of the Indian Christian Marriage Act. It will be observed that the Government of India are averse to any modification of the Act, or to the issue of any circular which would appear to lay upon Marriage Registrars a responsibility which is not imposed upon them by that Act.

The Government of India desire however to draw attention to the provisions of the Act and to suggest that Marriage Registrars be warned to exercise care in observing them.

I have the honour to be,

SIR.

Your most obedient servant,

H. SHARP.

Offg. Secretary to the Government of India.

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Dated the 17th June 1915.

From—The Reverend John Godber, M.A., Bishop's Chaplain, To—The Secretary to the Government of India, Department of Education.

I am directed by the Metropolitan to address you on a point connected with the administration of the Indian Christian Marriage Act which is referred to in the following Resolution passed by the Bishops at a session of the Episcopal Synod held in Calcutta in March of this year:—

"Resolved:—That whereas in certain cases marriage is prohibited by the Church of England have been solemnized for members of that Church by Registrars and other persons licensed under the Indian Christian Marriage Act to solemnize marriages, the Metropolitan be requested to approach the Government of India on the subject, suggesting that such marriages are invalid under section 88 of the Indian Christian Marriage Act, and asking that if this suggestion be correct, Government should issue instructions accordingly to the officers concerned."

2. Section 88 of the Indian Christian Marriage Act lays down that "nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into". By the term "personal law" the Metropolitan believes it to be understood the marriage law and custom of the religious Body to which the parties belong. The marriage law and custom of the Church of England is a perfectly explicit and well-known one being contained in the "Table of kindred and affinity, wherein whosever are related are forbidden in scripture and our laws to marry together", which is bound up with the Prayer Book. It need scarcely be said that the relationship of uncle and niece is one in the case of which marriage is forbidden by that Table. Instances, however, not seldom occur in which marriages are performed by Civil Marriage Registrars between persons, one at least of whom is a member of the Church of England, who are related to each other in this degree. I enclose copies of three such cases which have occurred within a comparatively recent period, in the Presidency of Madras, while the Metropolitan remembers one or more similar cases which occurred in the Punjab while he was Bishop of Lahore.

3. It appears that, if the meaning which the Metropolitan has assumed to be that of section 88 of the Act is correct, such marriages are invalid, the parties to them being thus placed, quite possibly through ignorance and without any intention of being law-breakers, in as grave and unfortunate a position as can be imagined. It may be added that in connection with some, at any rate, of these cases, the result of such action by a Civil Marriage Registrar—who may belong to a Christian denomination other than that of the Church of England—has been to engender a most regretable degree of ill-feeling and resentment on the part of the Church of England congregations who see their laws and customs thus set at naught.

4. Instances could also be given in which marriages, other than between uncle and niece, have been similarly performed for persons belonging to the Church of England who are related to each other in some other degree which is contained in the list of Prohibited Relationships.

5. The difficulty appears to arise, in part at least, from the fact that the Act though making the reference I have indicated, in its 88th section, to the "personal law" of parties who desire to avail themselves of the Act, has no provision by which a Civil Marriage Registrar can require information, officially of the denomination to which those parties belong, nor is any obligation laid upon a Civil Marriage Registrar to ascertain (apart from the declaration of the parties themselves that they believe no hindrance of kindred or affinity exists) that no such relationship exists between parties presenting themselves for marriage as would bring the union within the class of those contemplated in section 88, while with regard to the declaration of the

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parties, it has to be borne in mind that considerable uncertainty may prevail especially in the case of somewhat ignorant persons, to the details of the marriage law of their own Church.

- 6. It has been suggested to the Metropolitan that section 41, proviso 1, of the Act, does, if properly understood and duly acted on, impose this obligation on the Registrar who is required to ascertain "to his satisfaction" that no lawful impediment exists; but from the answer of the Registrar concerned in case no. 1 of those enclosed, it does not appear that he, at any rate, understands that section in this sense.
- 7. Inasmuch then as the ascertainment of whether particular parties stand within the prohibited degrees must depend in fact on their relationship and on the denomination to which they belong, the Metropolitan urges that Government should either amend the existing Act so as to enable these facts in each case to be ascertained or, if amendment is not thought necessary, that a Circular should be issued to Registrars explaining the full bearing of section 88 and making it imperative for them, in order to "satisfy themselves" within the meaning of section 41, proviso 1, to ascertain in what (if any) relationship the parties stand to one another and to what religious denomination they belong. It may be pointed out that any erroneous decision by the Registrar adverse to the parties, is always remediable under section 46 of the Act.
- 8. The Metropolitan urges that the evil to which attention has thus been drawn by the Bishops is a real one, of not infrequent occurrence, and calls for some remedy, and his Lordship expresses the earnest hope of the Bishops that Government may be pleased to deal with it in some effective manner.

(First case.)

G. O.no. 346-Public, 24th April 1908.

GOVERNMENT OF MADRAS, PUBLIC DEPARTMENT.

Read-the following papers:-

10 3.

Τ

Letter—From the Ven'ble H. B. HYDE, M. A., Archdeacon of Madras and Bishop's Commissary,

To-The Chief Secretary to the Government of Madras.

Dated Madras, the 29th February 1908.

No. 2834.

I have the honour to represent that it has been reported to the Lord Bishop by the Reverend W. H. Blake of the S. P. G. Mission at Tanjore that on the 10th instant at Tiruvidamaruthur near Kumbakonam, Mr. A. David, the District Marriage Registrar, performed a ceremony of marriage between two Native Christians, viz., S. Devasahayam Daniel and C. Annal Rajamoni Ammal, the bride being niece, that is to say, sister's daughter, to the bridegroom. The marriage was performed in the house of the bride's father, Mr. J. Chinnasawmy Pillay. The bride and bridegroom are young and inexperienced in the law. The bridegroom's father is dead. Mr. A. David considers that in performing this marriage within the prohibited degrees he is not violating section 88 of the Indian Christian Marriage Act, for he is understood to hold that the alliance is legally indistinguishable from that of a man with his late wife's sister, which he supposes to be permitted by the personal law of the parties, i.e., that of the Church of England within which the parties received baptism. I request, in the interest of the moral welfare of the Christian communities of the Diocese, that Mr. David may be acquainted with the invalidity of this marriage and restrained from certifying such alliances as Christian marriages in the future.

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Reference no. 930-1, Public, dated the 17th March 1908.

The District Magistrate, Tanjore, is requested to be so good as to obtain and submit to Government the explanation of Mr. A. David, the Marriage Registrar of Tanjore, as regards the complaint in the enclosed copy of letter no. 2834, dated 29th February 1908, from the Ven'ble the Archdeacon of Madras.

(By Order).

A. GALLETTI,

Under Secretary to Government.

125.

III

Letter—From J. P. Bedford, Esq., I.C.S., Collector of Tanjore, To—The Chief Secretary to Government.

Dated the 12th April 1908.

No. R. Dis. 409-Rev.

In reply to Government memorandum no. 930-1-Public, dated the 17th March 1908, I have the honour to submit a letter from Mr. A. David, Marriage Registrar of Tanjere, containing his explanation for having performed an invalid marriage on the 10th February 1908.

106.

No. 346-Public, 24th April 1908.

Enclosure.

Letter—From M. R. Ry. A. David Pillai, District Marriage Registrar, Tanjore, To—The District Magistrate, Tanjore. Dated the 4th April 1908.

No. 1.

I have the honour to acknowledge the receipt of the official memorandum from Government, no. 930-1, dated the 17th March 1908, and your letter, dated 10th *idem*, no. 1366, calling upon me for an explanation in respect of a marriage performed by me as District Marriage Registrar on the 10th February 1908.

2. The facts of the case are briefly these:—

On the 24th January 1908, one S. Devasahayam Daniel of Tanjore gave me notice in writing in the prescribed form (Section 38 of Act XV of 1872) informing me of his intention to marry one Annal Rajamoni Ammal of Thiruvadamarudur in the Tanjore District. The notice was duly published as provided by section 39. The girl being a minor, 14 days' time was given for objections, if any, to the proposed marriage (section 41). The young man thereupon gave me a declaration in writing that he believed there was no legal impediment to the said marriage (section 42). He represented himself to be a teacher in the Lutheran Mission School at Tanjore, which led me to believe that he belonged to the Lutheran Mission, where a marriage with a sister's daughter is permitted; and acting upon the above decalration and no protest having been entered by any person within the prescribed period of 14 days, I performed the marriage on the 10th February 1908 in the bride's house at Thiruvadamarudur as requested in the notice issued under section 38.

3. Marriage with a wife's sister, which stands on the same footing as a marriage with sister's daughter and which is also within the prohibited degrees specified in the Liturgy of the Church of England, has been once performed by me with the cognizance of Reverend Blake himself. He did not then report the case to the Bishop. Similar marriages have also been solemnized by Registrars of other districts. This accounts partly for my misunderstanding section 88 of the Christian Marriage Act.

they belong; and I have failed to find any precedent where such enquiry was made prior to the marriage. Neither the form of notice prescribed by section 38 nor the form of certificate issued under section 41 contains any column for the relationship of the parties or the church to which they belong. The only sections which direct an enquiry are sections 44, clause 3 and section 53. The former section restricts the enquiry to the matter of a protest made under that section, while enquiry under section 53 is confined to particulars required to be registered in the Marriage Register Book (vide section 54 and the form prescribed in schedule IV). Had the Legislature contemplated the holding of an enquiry into the truth or otherwise of the allegations contained in the declaration made under section 42, this would have been explicitly stated as in the cases mentioned in sections 44 and 53. If any of the parties make a false oath, he or she would suffer the penalty prescribed by section 66 and the consequences resulting from an invalid marriage. I do not aver that the Legislature intended by the above enactment to encourage invalid marriages. But so long as the Act is silent as to the necessity of an enquiry by the Registrar into the truth or otherwise of the allegations contained in the declaration made under section 42, invalid marriages may occasionally have to be

performed.

5. I beg now to invite the special attention of Government to certain facts in connection with the complaint preferred by Revd. Blake, which require to be considered in disposing of the same. He and his Assistants, Reverends Manuel and Visvasam, the former of whom is the Parish Priest, reside almost next door to my house. We meet each other almost every day. Their catechists and other agents live also in the immediate vicinity of my house. Invitation cards had been issued by the bride's father to all of them including Revd. Blake and to the whole of the Christian community inviting them for the wedding. I believe that Revd Blake and his advisers knew that a marriage within the prohibited degree was going to be performed as between two members of their own church; but none of them thought it worth while to bring the fact to my notice within the time prescribed for taking objections. Mr. Blake stood by and allowed the prescribed time to expire; and it was not until the expiration of another two weeks after the marriage that he thought it necessary to hand me over to the Government, he would have avoided all this correspondence and saved me from my present unfortunate position, had he brought to my notice in time any objections he might have had to the contemplated marriage.

6. For the first time after the marriage, he drew my attention to the matter in the course of a private interview I had with him in his house on the 19th February last. It was then that I came to understand that the parties belonged to the Church of England. At first, I attempted to justify my conduct; but after mature consideration and after reading more carefully the Act and the Statement of the Objects and the Reasons for the enactment and after consulting a more experienced Marriage Registrar, I became convinced that I had made a mistake; and no one regrets it more than I do. I belong to the oldest Native Christian family in Tanjore who have been staunch adherents of the Church of England for over a century; and being also a member of the Tanjore S. P. G. Church Council, it cannot for a moment be supposed that I acted in defiance of the Canonical Laws of my own mother Church. I beg to express my unqualified regret for having unintentionally acted in disregard of the rules of that Church and to assure the Government that a mistake of the kind will not be allowed to occur again.

Nº 7.

No. 346-Public, dated the 24th April 1908.

Order.

Recorded.

2. The suggestion of the Marriage Registrar, Tanjore district, in paragraph 3 of his letter, that marriage with a sister's daughter (which is a consanguineous

marriage) "stands on the same footing" as marriage with a deceased wife's sister is clearly incorrect.

J. N. ATKINSON, Acting Chief Secretary.

To the Ven'ble the Archdeacon of Madras.

To the District Magistrate, Tanjore.

108.

(Second case.)

No. 400-D., dated the 23rd October 1908.

From-The Revd. J. A. Sharrock, M.A., Superintending Missionary and Manager Society for the Propagation of the Gospel,

To-The Revd. L. E. Cox, B.A., Bishop's Chaplain, Madras.

I regret to have to inform you that a Christian youth, named R. Joseph, has recently married his sister's daughter at the Tanjore Registrar's Office. The girl's father is named Solomon, and he is a teacher in the Taluq Board School at Jayankondam. It seems to me that the whole family should be excommunicated.

1.9.

No. 219, dated the 31st October 1908.

From-The Revd. L. E. Cox, B.A., Bishop's Chaplain, Madras,

To-The Revd. J. A. Sharrock, M.A., Superintending Missionary and Manager, Society for the Propagation of the Gospel.

With reference to your letter no. 400-D., of the 23rd instant, I am directed by the Bishop to request you to be so good as to forward the names of both the parties themselves and the members of the families who were responsible. These are to be ex-communicated and the case is to be reported to Government. To enable me to report the case, please furnish me with the fullest possible details.

1/2/10

No. 415-D., dated the 12th November 1908.

From—The Revd. J. A. Sharbock, M.A., Superintending Missionary and Manager, Society for the Propagation of the Gospel,
To—The Revd. L. E. Cox, B.A., Bishop's Chaplain, Madras.

With regard to the case of the youth who married his niece, the names of the parties are R. Joseph and Selvamanikam; her father's name is Solomon, a teacher in the Board School at Jayankondam and her mother's name is Mariammal. I enclose a copy of the girl's baptismal certificate, showing that she was baptized by the Rev. G. Yesuadiyan at Irungalur in 1894. The parents were, I am told, at one time Lutherans, and at the marriage justified themselves by saying that the Lutherans, allow such marriages. As a matter of fact they have always attended our Church and I have frequently given the Holy Communion to both of them. I think that Mr. David, the Registrar for Marriage at Tanjore, was much to blame and I wrote some time ago to the Collector about it, but have received no reply. The marriage took place on the 5th October 1908 in Tanjore. I am informed that the Marriage Registrar of Trichinopoly refused to marry them.

No. 2896, dated the 20th November 1908.

From—The Revd. L. E. Cox, Bishop's Chaplain, Madras, To—The Chief Secretary to Government, Ecclesiastical Department, Madras.

Adverting to G. O. no. 346,-Public, dated April 24th, 1908, I have the honour by order of the Bishop to state, for the information of His Excellency the Governor-in-Council, that the Revd. J. A. Sharrock of the Society for the

Propagation of the Gospel Mission at Trichinopoly reports the occurence of another case, exactly similar, at Tanjore on October 5th, 1908. On that date a Christian youth named R. Joseph was married to his niece by M. R. Ry. A. David Pillai, District Marriage Registrar, at his office in Tanjore. Mr. Sharrock also states that he has been informed that the Marriage Registrar at Irichinopoly refused to marry the parties. The Bishop hopes that His Excellency the Governor-in-Council may be pleased to direct that measures be taken to put a stop to these irregularities on the part of Civil Registrars which cause grave scandal.

GOVERNMENT OF MADRAS.

G. O. No. 973, Public Department, dated 9th December 1908.

Read the following papers:-

T

Letter—From the Collector of Tanjore, To—The Chief Secretary to Government, Dated 20th October 1908. No. 5939.

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Letter—From the Bishop's Chaplain, To—The Chief Secretary to Government. Dated 20th November 1908. No. 2896.

No. 973, dated the 9th December 1908.

1.12

Order.

As marriage with a niece is recognized as valid among certain sections of Christians it is doubtful whether the Registrar could have refused to perform the ceremony.

2. M. R. Ry. A. David Pillai having voluntarily resigned his office as District Marriage Registrar of Tanjore, the resignation will be accepted. The District Magistrate will nominate a suitable person for the office.

C. J. WEIR, Acting Chief Secretary.

1 13.

ENCLOSURE.

No. 973-Public, dated the 9th December 1908. Letter—From the Collector of Tanjore, To—The Chief Secretary to Government. Dated the 20th October 1908. Rec. No. 5939-G. R.

I have the honour to submit, for the orders of Government, a letter from the Revd. J. A. Sharrock, Society for the Propagation of the Gospel Mission, Trichinopoly, bringing to my notice the facts that M. R. Ry. A. David Pillai Avl, performed a ceremony of marriage between one R Joseph and his niece. R. Joseph belongs to the Church of England and section 88 of the Indian Christan Marriage Act applies.

2. This is not the first occasion on which such conduct on the part of the Registrar has been brought to notice (vide Government Order no. 346-Public, dated the 24th April 1905). I consider that the Registrar should, on this occasion, be shown no mercy (unless, of course, he has any proper explanation) but either prosecuted or deprived of his office or both. I solicit early orders.

No. 14.

Letter—From the Revd. J. A. Sharrock, M.A., Superintending Missionary and Manager, Society for the Propagation of the Gospel Mission,

To—The Collector of Tanjore. Dated the 17th October 1908. No. 390-D.

I have the honour to inform you that on Monday, the 5th October, a Christian youth named R. Joseph, belonging to this Mission was married to his niece by Mr. David, the Registrar of Marriages in Tanjore. I sent a telegram to try and stop this incestuous marriage, but the Registrar excused himself, I am informed, on the ground that the girl belongs to the Lutheran Church. I do not see what bearing this has on the case at all. I have the honour to ask if (1) it is legal for any Registrar to perform such marriages, and if (2) t e Registrar holding his office, as I presume he does, under your control and approval, is allowed by Government to conduct such marriages, which are not only contrary to the law of God but conducive to the worst interests of humanity, leading to deafness and insanity in the resulting offspring and so on.

1015.

(Third case.)

No. 3138, dated the 8th August 1911.

From—The Ven'ble L. E. Cox, M. A., Archdeacon and Bishop's Chaplain, To—The Chief Secretary to the Government of Madras, Ecclesiastical Department.

With reference to the Indian Christian Marriage Act, Part VIII, clause 88, I have the honour, by order of the Bishop, to request that His Excellency the Governor-in-Council may be pleased to sanction a reference to the Advocate-General, for favour of his opinion on the following case:—

- 1. An Indian Christian named Batta Anandam, a member of the Church of England and living at Kakulapad in the Ellore District, was recently married to his sister's daughter.
- 2. The marriage was performed by the Revd. K. T. Dayaseela, who is a member of the Indian Christian Realm Mission and is licensed under the Indian Christian Marriage Act at Ellore.
- 3. The marriage of Batta Anandam to his niece is contrary to the Marriage Law of the Church of England.

The Bishop will be glad to be informed as to—

- (i) whether the term 'personal law' in clause 88 of the Indian Christian Marriage Act includes the marriage law of the Church of England in the case of Indian Christians or Anglo-Indians or Europeans domiciled in India who are members of the Church of England; and
- (ii) whether the marriage of Batta Anandam is legal or valid.

12.16.

GOVERNMENT OF MADRAS.

G. O. no. 1351-Public Department, dated the 7th December 1911.

Read the following paper:—

From—The Rt. Revd. the Lord BISHOP of Madras, To—The Chief Secretary to the Government of Madras. Dated 8th August 1911. No. 3138.

No. 1351, dated the 7th December 1915.

Order.

The Government regret that they do not see sufficient reason to make a reference to the Advocate-General on the subject.

No. 17.

No. 417, dated the 9th August 1915.

From—The Hon'ble Mr. H. Sharp, M.A., C.I.E., Secretary to the Government of India, Department of Education,

To -The Bishop's Chaplain.

I am directed to acknowledge the receipt of your letter, dated the 17th June 1915, in which, with particular reference to cases of marriage which are stated to have been solemnized by Marriage Registrars between an uncle and a niece, at least one of whom was a member of the Church of England, the Government of India are requested either to amend the Indian Christian Marriage Act, 1872, or, if amendment is not thought necessary, to cause a circular to be issued to Marriage Registrars making it imperative on them to ascertain in what relationship, if any, the parties to a marriage stand to one another and to what religious denomination they belong.

2. In reply, I am to say that the primary responsibility in contracting marriages rests on the parties intending matrimony, who have to make certain declarations on oath under sections 42 and 51 of the Act. Section 41 of the Act does not make it imperative for a Marriage Registrar to make independent enquiries or to satisfy himself as to the validity of a marriage, and the Government of India do not consider it advisable so to change the law as to throw a responsibility of this kind upon Registrars. Questions regarding the validity of a particular marriage are often of a difficult nature and can only be finally decided by a Court of Law. In these circumstances, the Government of India regret that they are unable to take the action suggested by you.

No. 18.

No. 7968G., dated Shillong, the 22nd December 1915.

Memo. by-The Under-Secretary to the Chief Commissioner of Assam, General Department.

Copy of letter No. 570, dated the 22nd—29th November 1915, from the Secretary to the Government of India, Department of Education, and enclosures, forwarded to the Registrar General of Births, Deaths and Marriages, Assam, for information and necessary action.