

Ecclesiastical (1897) Department.

ORDINARY MS.

G.O., No. 73

DATED 28.9.97

INDEXED.

51/30/9

8-8

[Despatch Abstract.]

Comg: to the Senior Chaplain, Church of Scotland letter from the G of S inviting opinion on the proposal made by the members of the Kirk Session in Bombay that every duly Constituted Kirk Session in India may be declared by legislation a Corporate body with full powers as trustees for all funds entrusted to them.

T.
11/10/97

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

[Eccl.
I.]
250-51.37.

Ecclesiastical (1897) Department.

CURRENT No. 241

H.M. (not necessary at this stage?)

Order
7/11/97

73 of 28th Sept 97

Communicated to

the Senior Chaplain Church
of Scotland, Madras, who
is requested to obtain,
and forward with his
remarks thereon, the
opinion of the Kirk
Session in Madras.

From

The Secy: to the Govt of India
Home Dept. Eccl.

No. 355

Dated 13

Received 22

Registered 22

Enclosures 4

Spare copies 7 of warrant, 7 of Encl 3, 7
of Encl 4

SUBJECT,

Cio
24/9/97

Ak.
24/9/97

27/9/97

opinion on
Inviting ~~attention~~ to the
proposal made by the ~~State~~
members of the Kirk Session
in Bombay that every ~~only~~ consti-
tuted Kirk Session in India may
be declared by legisⁿ a corpora-
tion with full powers ~~as~~ ^{as} trustee
for all funds &c entrusted to
them -

to
The Sen^r. Chap. of Scotland (as
with encl. 1 & 2 of which
to be ret'd.

S.A.
24/9/97

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

No. 46, dated Bombay Castle, the 14th May 1897.

om—J. DEC. ATKINS Esq., Secretary to the Government of Bombay, Ecclesiastical Department,

To—The Secretary to the Government of India, Home Department.

I AM directed to forward herewith copy of a letter from the Senior Chaplain, Church of Scotland, No. 108, dated 23rd March 1897, together with a memorial to the address of His Excellency the Viceroy from the Senior Chaplain and members of the Kirk Session of Bombay praying—

- that every duly constituted Kirk Session in India may be declared, by legislation if necessary, a corporate body with full powers, as trustees for all funds, etc., entrusted to them, and
- that an act may be passed constituting the Senior Minister for the time being of the Presidency Church of Scotland in each Presidency town a Corporation Sole for the purposes of the Church of Scotland in India.

The powers sought are on behalf of the Church of Scotland in India generally, and it does not appear that this Government can with advantage express an opinion on the points raised.

No. 108, dated Bombay, the 23rd March 1897.

From—REVD. T. H. GREIG, Senior Chaplain, Church of Scotland,

To—The Secretary to the Government of Bombay, Ecclesiastical Department.

I HAVE the honour to forward, for the most favourable consideration of His Excellency in Council, the enclosed memorial from the moderator and Members of the Kirk Session of Bombay, praying that His Excellency the Viceroy and Governor General in Council will be pleased to grant, by legislation if necessary, the incorporation of the Kirk Session of the Church of Scotland in India to be a legally constituted corporate body for financial purposes, and of the Senior Minister for the time being of the Presidency charge of the church of Scotland to be a Corporation Sole for the purposes of the Church of Scotland in India as the Bishop is for those of the Church of England in India.

I have the honour to request that His Excellency in Council will be good enough to forward it, with his strong recommendation that the prayers be granted, to His Excellency the Viceroy and Governor General in Council.

I have the honour to state that the Acts in force, and referred to in paragraph 7 of the memorial (page 3), do not appear to provide for the winding up of a trust, or for the making over of the trust, its funds, and responsibilities to other hands when it becomes expedient that this should be done, excepting by the step impracticable to the Kirk Session, viz., dissolution of the Session. The Session cannot, however, dissolve itself without violating the law.

I have farther the honour to state that the difficulties stated in paragraph 8 of the memorial (page 3) have all been encountered by myself during my incumbency of St. Andrew's Church, Bombay.

I have farther the honour to state that, after most careful consideration of all the objections that have either been raised by others, or been suggested spontaneously to me, and after consultation with those who seemed best fitted to give a sound opinion on the subject, I am constrained to consider the prayers of the memorialists most reasonable and such as the State in India may most courteously and safely concede to the Courts of the Church of Scotland in India—a Church, which, as a separate jurisdiction, has for centuries been entrusted by the State at home with larger and more important civil powers, and whose lawful orders the State is bound by her Charter to enforce if need for doing so arise. The memorialists do not ask that their Church Courts in India should be invested with all the powers entrusted to the Courts having similar designation at home. They ask merely that the State will be pleased

to confer on the Courts of the Church of Scotland in India, but in such a way as to suit their constitution and laws, those powers, etc., which the State has already made available for any half dozen persons who, even though they be the mere victims of religious discontent or vanity, may choose to arrange themselves into a "Religious Society" and go through the process of being registered as such under the existing law, and that their Senior Minister here should be, what every Parish Minister in England and every one in Scotland is said to be, "a Corporation Sole." Surely the memorialists are right in assuming that the State in India can show to the Church here this fraction of the trust she enjoys at home. And surely they are right in expecting that the Governments of India, who have hitherto been so good and kind to her, have only to have her need in this respect put before them, as the memorialists have now sought to do, to at once, in their courtesy, grant the substance of these prayers, however careful they may be, through their larger and more varied experience and greater wisdom in such legal matters, to arrange the details and the forms in which as law the substance shall be embodied for her use.

I have farther the honour to state that the Revd. A. B. Watson, who, as Acting Senior Chaplain, Church of Scotland, Bombay, and Acting Senior Chaplain, St. Andrew's Church, Bombay, has had considerable opportunities for observing the difficulties and dangers of the present system, entirely agrees with me as to the need for the incorporations asked for, and is desirous that the prayers of the memorialists may be granted without delay to the Senior Minister, and to the Kirk Session of Bombay.

I have the honour, therefore, to request that His Excellency in Council will be good enough to obtain for the memorialists the hoped-for answers to their prayers.

To

HIS EXCELLENCY THE RIGHT HONOURABLE VICTOR
ALEXANDER BRUCE, EARL OF ELGIN AND
KINCARDINE, P. C., K. G. M. S. I., G. M. I. E.,
LORD BRUCE OF KINLOSS, AND LORD
BRUCE OF TORRY IN THE KINGDOM
OF SCOTLAND, AND BARON ELGIN
OF ELGIN IN THE UNITED KINGDOM,
Viceroy and Governor General of India in Council.

The Humble Memorial of the undersigned Senior
Chaplain and Members of the Kirk Session of
Bombay of the Church of Scotland in India.

HUMBLY SHEWETH,—That the Kirk Sessions at the three Presidency Towns of Calcutta, Madras and Bombay were constituted by the respective first Chaplains of the Church of Scotland sent to these stations by the Honourable East India Company in 1815-16, and have been in almost continuous existence and in the exercise of their powers ever since. That these Chaplains constituted the above mentioned Kirk Sessions under warrant of an Act of the General Assembly of the Church of Scotland (dated at Edinburgh, the 30th May 1814) for the exercise of discipline in their congregations and the management of their ecclesiastical affairs in accordance with the laws of the Church. The Kirk Sessions are, by the same Act, made subject to the jurisdiction of the Presbytery of Edinburgh. They are, by the same Act, empowered to combine in sending two representatives annually to the meetings of the General Assembly which meets in Edinburgh as a Supreme Court with judicial, executive, and also legislative powers, under the Charter of the Establishment of the Church by law. And these representatives sit, deliberate and vote like the other members on all matters that may come before the Assembly.

2. That there have been from time to time other Kirk Sessions of the Church of Scotland constituted in the mofussil but without the power of representation in the Assembly. These were constituted under a separate and

much later Act of Assembly passed to meet a then pressing need. They stand on a different footing, therefore, from the original three.

3. That the legal status of these respective Courts under the law of India has never been clearly defined, so that it has always been a matter of doubt whether they enjoy in reality the rights and privileges of the Kirk Session in Scotland for financial purposes in respect of receiving, holding, administering, and disposing of Trust Funds entrusted to them for any public or any private good.

4. That while the Indian Courts referred to had no Trust Funds to keep and manage, it did not matter much whether they had or had not the powers of a corporate body. That the case is now altered in this respect, for there are Trust Funds in their hands for administration, and there is every probability that the amount in their respective hands will steadily increase as the years go on.

5. That the funds referred to consist of endowments for tombs in the cemeteries under their charge officially or otherwise; Endowment Funds for keeping certain cemeteries in order; Sabbath School and other Building Funds; and other Miscellaneous Funds that cannot be made over to the Trustee under the Charitable Endowments Act.

6. That there is also immoveable property belonging to the Church of Scotland in India, such as Churches, Schools, Manses, a Soldiers' Home, and their sites and appurtenances, for which an official trustee who is resident in India should be appointed; and the natural and safest trustee for that purpose is the Presidency Kirk Session of the district in which the property is situated, and after them, the Senior Minister of the Presidency Charge with or without the Accountant General as Joint Trustee.

7. That at present there seems to be no law under which the Kirk Session can be constituted such a Trustee with safety to themselves and the individual members, unless they are in law a "Corporate Body" with all financial powers of a Church Court at Home. The provisions of "The Religious Congregations Act, 1879" (reprinted and passed as "The Religious Societies Act, 1880," which has a few slight alterations in the text and some additional provisions to admit of the dissolution of the Society and the distribution of the funds and other property belonging to it at the time of dissolution) are not altogether suitable for the purposes of the Courts of the Church of Scotland in India in their capacity as Trustees of Funds. The same is true of the Act XXI of 1860 for the Registration of Societies. Both Acts were reported against by the Senior Chaplain, Church of Scotland, Bombay, in 1879, when the first mentioned Act was under consideration; but, though his opinion was based on legal opinion obtained by him, no action seems to have been taken to amend the said Act in the direction pointed out by him.

8. That the present system of getting Trustees on the part of the Kirk Session for the purposes of their funds is most unsatisfactory. In Bombay the funds stand in the name of either the Senior Chaplain of the Church of Scotland by name (two funds belonging to a separate set of trusts stand each in the name of the Senior Chaplain of the Church of Scotland, Bombay, for the time being, without any person's name being specified) or in the joint names of the Senior Chaplain of St. Andrew's Church, Bombay, and the Treasurer of that Church, as individuals. The inconvenience and cost of these arrangements have been greatly reduced in all these cases by the fact that both the present Senior Chaplain, Church of Scotland, Bombay, and Senior Chaplain of St. Andrew's Church, Bombay, and his immediate predecessor in these offices have held the offices in Bombay for over fifteen years each; though the latter was not for more than five years at a time the substantive Head of the Department. There is little probability of any successor to the present incumbent holding the office of Senior Chaplain of St. Andrew's Church, Bombay, for so long a time as the present incumbent has done. The Treasurer has been frequently changed in the course of these two incumbencies. There is as little prospect of obtaining a permanent Treasurer as there is of securing a permanent

Chaplain; or rather, there is less. It is inexpedient that Trust property should be held at the sole disposal of one person, however good he may appear to be. It is unfair to the funds that they should bear the cost of frequent endorsements through the changing of the Trustees. And it is troublesome to get things separated and accounts adjusted on the death of a Trustee, or the interest on Government and other securities collected when the sole Trustee dies, or is transferred to another station without having signed over his trust to another, or to other hands. And there is trouble also when an individual Joint Trustee dies abroad, or leaves for a distant station on short notice and does not return for months or years.

9. That the Kirk Session of Bombay have for many years been recognised, in a kind of way, as having a corporate capacity by the Local Government in so far that they have been accepted and appointed Trustees for the Scottish Cemetery in their town. They also had a courtesy recognition for a time during the first year of their existence, as may be seen from their records where the letters to the Government on the affairs of the Church were signed by the Moderator and Clerk "By order of the Kirk Session" and were answered accordingly by Government. In a short time, however, this custom ceased abruptly without reason assigned; and since then the Court have not been recognised by Government farther than as the Scottish Cemetery Trustees.

Your Memorialists therefore humbly pray—]

I. That it may please Your Excellency in Council, having taken into your favourable consideration these things, to declare, by legislation if necessary, that every Kirk Session of the Church of Scotland in India which has been duly constituted to be a Church Court for ecclesiastical purposes under any Act of the General Assembly of that Church; and every Kirk Session in the same territory which shall hereafter be duly constituted under the laws of that Church for the time being in force, is and shall be a Corporate Body with full rights and privileges and powers (including power to wind up and dispose of a Trust by any lawful method) as Trustees under any law in force for the time being within the same territory, for all purposes of finance in connexion with the congregation for which they are a Court, or with any other public or private body, committee, or individual person or persons, by or for whom funds have been or may hereafter be entrusted to them for management and care, as if they had been duly incorporated by a special Act of the Legislature passed for the purpose: and that the signature of the Moderator and the Treasurer, each for the time being of the Session, shall be sufficient for all purposes of finance for which the signature of the Trustees may be required, provided their signatures have been affixed by order of the Session.

II. Or, to pass such an Act as will safely provide the rights, privileges and powers required by the Session.

III. And, to pass an Act which shall constitute the Senior Minister for the time being of the Presidency Church in connexion with the Church of Scotland in each of the Presidency Towns a Corporation Sole for the purposes of the Church of Scotland in India as the Bishop is for the purposes of the Church of England in India.

IV. Or, to do otherwise as your Excellency in Council may see best fitted to afford the relief needed in a manner that will secure efficiency and safety to the Session in their custody and management and transfer of the funds, and at the same time secure the confidence of all who may desire to entrust their funds to the care and management of the Session, or to the Senior Minister as a Corporation Sole.

And your Memorialists, as in duty bound, shall ever pray.

No.

No. 258, dated Simla, the 12th July 1897.

No. 27.

From—J. P. HEWETT, Esq., C.I.E., Secretary to the Government of India.

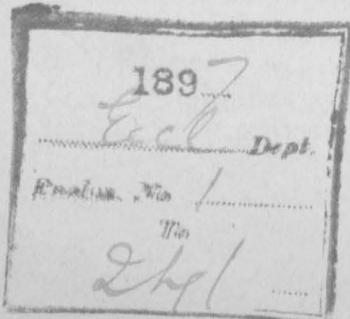
To—The Solicitor to Government, Calcutta.

I am directed to forward a copy of a letter from the Government of Bombay, and of its enclosures, being a letter from the Senior Chaplain of the Church of Scotland and a memorial from him and the members of the Kirk Session, Bombay, praying (1) that every duly constituted Kirk Session in India may be declared, by legislation if necessary, a corporate body with full powers as Trustees for all funds, etc., entrusted to them, and (2) that an Act may be passed constituting the Senior Minister for the time being of the Presidency Church of Scotland in each Presidency Town a Corporation Sole for the purposes of the Church of Scotland in India.

I am also to forward a copy of the Statement of Objects and Reasons and the Reports of the Select Committee connected with the Bill which became Act I of 1880, together with a copy of certain papers* relating to the Bill; and to say that it appears that the Act was intended to cover bodies such as Kirk Sessions in India.

3. Before, however, replying to the Government of Bombay, the Governor General in Council desires to be furnished with the opinion of the Honourable the Advocate General as to whether the view expressed by the memorialists as to their legal status is correct, and whether their recognition by Government as a corporate body and their constitution as effected by the Act of the General Assembly of the Church of Scotland, requires supplementary legislative action to entitle the Session to receive, hold and dispose of Trust Funds as a corporate body of Trustees. I am further to request that, as regards the objection taken by the memorialists to acting under Act I of 1880, the Government of India may be advised as to whether there is any real ground for the view that the Kirk Sessions cannot appropriately register themselves as Trustees under the Act in question.

Exd.—J. E. F.



No. 949, dated Fort William, the 6th August 1897.

From—W. K. EDDIS, Esq., Solicitor to Government,

To—The Secretary to the Government of India, Home Department.

I HAVE the honour to acknowledge the receipt of your No. 258, dated 12th ultimo, and its enclosures, and with reference thereto I have the honour to forward herewith copies of the case I prepared and submitted to the Honourable the Advocate General and of his opinion thereon.

I added the last paragraph of the case as it seemed desirable to obtain a general opinion so that if legislation is resorted to, other denominations as well as the Church of Scotland may be dealt with also.

Case submitted to the Honourable the Advocate General.

The Solicitor to the Government of India forwards herewith a letter from the Home Department, No. 258, dated 12th instant, and its annexures, in connection with the memorial from the Senior Chaplain and Members of the Kirk Sessions of Bombay, to His Excellency the Viceroy and Governor General in Council, and requests that the Honourable the Advocate General will kindly advise for the information of His Excellency as to whether the view expressed by the memorialists as to their legal status is correct, and whether their recognition by Government as a corporate body, and their constitution as effected by the Act of the General Assembly of the Church of Scotland, require supplementary legislative action to enable the Session to receive, hold and dispose of trust funds as a corporate body of Trustees.

The Advocate General is also requested to advise as to whether there is any real ground for the view that the Kirk Session cannot appropriately register themselves as Trustees under Act I of 1880.

Also whether under the existing law the Roman Catholic or Church of England dignitaries in India of the rank of Bishop and higher ecclesiastical rank can be in any legal sense regarded as corporations sole for the purpose of holding property and transmitting it without deed to their successors, and, if not, whether if legislation is resorted to, it should not include other denominations as well as the Church of Scotland.

The 20th July 1897.

W. K. EDDIS,

Solicitor to Government.

Opinion of the Honourable the Advocate General.

From what I can gather from the only work I have been able to consult on the subject, *viz.*, Digest of Church Laws by Mr. Mair, D. D., 2nd edition, that the view expressed by the memorialists as to their legal status is substantially correct.

The Kirk Sessions are not a corporate body in this country and legislation is necessary to entitle the Sessions to receive, hold and dispose of trust funds as a corporate body of trustees.

The objection taken by the memorialists as to the unsuitability of the application of Act I of 1880 to the cases of bodies like Kirk Sessions seems to me also to be well founded.

The Roman Catholic Dignitaries in India of the rank of a Bishop and higher ecclesiastical rank are not in any legal sense regarded as corporations sole for the purpose of holding property, and transmitting it without deed to their

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successors, and, if legislation is resorted to, there is no reason why it should not include other denominations as well as the Church of Scotland.

Bishops of the Church of England are corporations sole for the purpose of holding property, etc.

The 5th August 1897.

G. C. PAUL.

No. 354.

FROM

J. P. HEWETT, ESQ., C.I.E.,

Secretary to the Government of India,

TO

THE SECRETARY TO THE GOVERNMENT OF BOMBAY,
ECCLESIASTICAL DEPARTMENT.

Home Department.
Ecclesiastical.

Simla, the 13th September 1897.

SIR,

I AM directed to acknowledge the receipt of your letter No. 46, dated the 14th May 1897, forwarding a letter from the Senior Chaplain, Church of Scotland, Bombay, and a memorial from him and the members of the Kirk Session in Bombay, praying (1) that every duly constituted Kirk Session in India may be declared, by legislation if necessary, a corporate body with full powers as Trustees for all funds, etc., entrusted to them; and (2) that an Act may be passed constituting the Senior Minister for the time being of the Presidency Church of Scotland in each Presidency Town a corporation sole for the purposes of the Church of Scotland in India.

2. In reply I am to say that the Government of India, after considering the question, do not see sufficient reason for creating the Senior Chaplain of the Church of Scotland a corporation sole, and they are therefore not prepared to move in that matter. The position of the Senior Chaplains is essentially different from that of Anglican Bishops in India, who are by their Letters Patent corporations sole. Roman Catholic Bishops are not corporations sole, nor are the dignitaries of other denominations.

3. With reference to the proposal that every duly constituted Kirk Session in India may be declared a corporate body with full powers over funds entrusted to them, I am to forward a copy of an opinion given by the Honourable the Advocate General of Bengal, and to request that the Governor in Council may be moved to favour the Government of India with an expression of his views on the request of the memorialists.

I have the honour to be,

SIR,

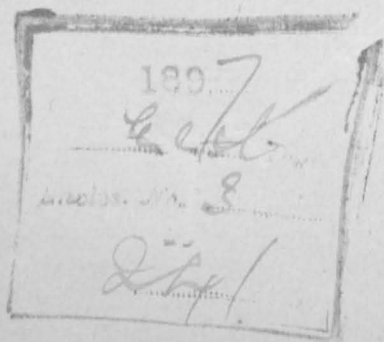
Your most obedient Servant,

J. P. HEWETT,

Secretary to the Government of India.

G. C. Press, Simla.—No. 1349 H. D.—10-9-97.—140.

G. C. Press, Simla.—No. 1348 H. D.—10-9-97.—141.



500
CURRENT NO 241

No. 355

FROM

J. P. HEWETT, Esq., C.I. E.,
Secretary to the Government of India,

CHIEF SECRETARY
22 SEP. 1897
GOVERNMENT OF MADRAS

TO

The Chief Secy. to the Govt. of Madras.

Home Department.
Ecclesiastical.

Simla, the 13th September 1897.

SIR,

I AM directed to forward a copy of the papers noted on the margin relating to a proposal made by the members of the Kirk Session in Bombay that

Letter from the Government of Bombay, No. 46, dated the 14th May 1897, and enclosure.

Letter to the Solicitor to Government, Calcutta, No. 258, dated 12th July 1897.

Letter from the Solicitor to Government, Calcutta, No. 949, dated 6th August 1897, and enclosures.

Letter to the Government of Bombay, No. 354 dated 13th September 1897.

every duly constituted Kirk Session in India may be declared by legislation a corporate body with full powers as Trustees for all funds, etc., entrusted to them.

2. Before considering the matter the Government of India are desirous of obtaining the views of the Kirk Session in Madras. I am accordingly to request that, with the permission of the Governor in Council, the opinion of the Session may be invited on the subject, and may be forwarded, together with an expression of the views of the Madras Government.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P. Hewett

Secretary to the Government of India.

