Educational (1899) Department.

ORDINARY MS.

G.O., No. 617

Dated 14-9-99 ✓

INDEXED.

28-296

[Despatch Abstract.]

Considering that that the Basel Mission, Mangalore was not the agent of Govt for the sale of Books referred to; & stating that Govt will, however, request the D.P.I to assist the Mission as far as is possible to obtain a sale for those books.

F.C.9

BACK PAPERS.

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

FURTHER PAPERS.

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

CURRENT No. 172

RR No 6850/99

1899

From

The Superintendent,

Basel Mission Book and Tract Depository,

Mangalore.

N/

Encl. 244 8/9-5-99

Referred to the Director of Public Instruction for remarks

(By order)

Asst Secy

To

The Chief Secretary to Government,

Madras.

No.

Dated 15th March 1899

Despatched 25th April 1899

Received 4-5-99

Regd. do

Enclosures:

Subject.

Soliciting payment of Rs. 5,620 expended by the Superintendent in paying the Press the cost of printing and binding and the Government the net profits on certain Government Copyright Books now remaining unsold in the Basel Mission Book and Tract Depository, Mangalore.

To the Director of Public Instruction

DIRECTOR OF PUBLIC INSTRUCTION
RECEIVED
10 MAY 1899
R. R. No.
MADRAS.

Mangalore, 15th March 1899.

FROM

The Superintendent,

Basel Mission Book and Tract Depository,

MANGALORE.

To

The Chief Secretary to Government,

Fort Saint George,

MADRAS.

Sir,

I beg to submit, for the orders of Government, the point now at issue between the Director of Public Instruction, Madras, and me as the Superintendent of the Basel Mission Book and Tract Depository, Mangalore.

2. The history of the case is briefly as follows:—

i. From a long time past the Basel Mission Press at Mangalore was printing, almost exclusively for Government, Malayalam and Canarese Books, and the Book Depository had also from the beginning until the end of 1883 charge of the Government Book Depôt at Mangalore.

146
22-3-84

ii. In 1884 the Director of Public Instruction (Mr. Grigg) in his letter to Government, No. 753 dated 9th February, submitted proposals for the closing of the Central Book Depôt and for the abolition of the post of Curator from the 1st April 1884, and recommended that the printing, publication and sale of Canarese and Malayalam Government Copyright Books (as also the sales of the stock of Malayalam and Canarese Books then on hand in the Central Depôt) should be entrusted to the Basel Mission at Mangalore on the terms specified in paragraph 8 of the said letter, and in making this recommendation he said—"The arrangement I now propose amounts to little more than a continuation of the present practice as regards printing on a more settled basis, and adding to the work this Mission used to perform the vending of books in Malabar. Mr. Garthwaite considers that no better agency could be employed, and I have every confidence in recommending the arrangement which I understand the Mission Authorities will accede to."

para 8 of the letter Flag A

iii. These proposals of the Director were approved by Government in Government Orders Mis. No. 146, Educational, dated 22nd March 1884, and No. 317, Educational, dated 9th June 1884; and the Superintendent of the Basel Mission Depository, Mangalore, accordingly undertook the work on the conditions laid down by the Director in paragraph 8 of his abovesaid letter No. 753 dated 9. 2. 84.

Flag A

iv. Condition (*g*) shewn in the said paragraph 8 required that the Basel Mission should "print and sell at their own charge, on estimate approved by the Director, receiving as remuneration 20 per cent of sale-proceeds, paying in monthly to Government the difference between the net cost of printing and binding the copies sold and the sale-proceeds minus 20 per cent."

v. The Director, in his Proceedings, No. 4113 dated 19th June 1884, communicating the abovesaid Government Orders to the Superintendent, prescribed certain forms of statements to be submitted monthly, showing the number of books sold and amounts realised etc., but at the same time gave the Mission, however, "liberty to purchase for cash, before sale to the public, an entire edition, deducting from the total value of the edition the commission claimable, and remitting the balance to the Treasury," and said that "as regards editions so taken the Director will simply require the submission of a quarterly statement showing the number of copies sold to end of last quarter, number of copies in current quarter, and balance on hand."

vi. There being a large number of Branch Depôts and Colporteurs connected with this Mission Central Depôt at Mangalore, the Superintendent did not always find it possible to get accounts of monthly transactions from all these within the prescribed date, and, as the alternative proposal of the Director in the abovesaid Proceedings, No. 4113 dated 19th June 1884, regarding payment in advance of the amount due on an entire edition tended to relieve the Mission of so much work in accounts, the Superintendent followed the latter mode, according to which alone has the Mission been since working all along.

vii. In 1888 the said Director sent to the Superintendent an Official Memorandum, No. BB $\frac{635}{635}$ dated 13th September, in which he said that the system then existing would terminate at the latest on the 31st March 1889 and that those Proceedings were to be regarded as notice of such termination, and he proposed for acceptance by the Superintendent some other conditions for printing and selling Government Copyright Books.

viii. The Superintendent in his reply, dated 3rd October 1888, accepted the said conditions, and the work continued to be done by the Mission.

ix. It is noteworthy that the new conditions specified in the said Official Memorandum, No. BB $\frac{635}{635}$ dated 13th September 1888, unlike those formerly laid down in the abovesaid Director's letter to Government, No. 753 dated 9th February 1884, contained no clause regarding payment to Government of the net amount calculated by deducting 20 per cent commission and cost of printing and binding from the selling price of the edition.

x. Yet, somehow, the Mission continued paying to Government, as before, in advance in each case, the net amounts so calculated, and to the Press the cost of printing and binding; and the Government always accepted such payments, with the result that a large amount so paid is now outstanding without any prospect to this Depôt of making up the same by the sale of books printed and published by the Mission for Government; for, the Acting Director of Public Instruction (Mr. Monro) by Notifications dated 23rd June and 23rd July 1894, published on pages 1119 and 1175 of the *Fort Saint George Gazette* for July 1894, at once ordered that the Government Copyright Books in question would either be revised or be superseded by other books with effect from 1st January 1895, and that the use of the books in their then existing form would not be permitted after that date; and though, on a representation from the Mission to the said Acting Director of Public Instruction, the abovesaid Notifications relating to Government Copyright Canarese, Malayalam, Anglo-Canarese and Anglo-Malayalam Books were temporarily cancelled by a subsequent Notification, dated 14th August 1894, published on page 1300 of the *Fort Saint George Gazette,* dated 21st August 1894, yet the Managers of Schools having been latterly given full option to use any book out of a long list of sanctioned text-books, many copies of the said Government Copyright editions already printed by the Mission remained unsold and are even now lying in our stock without any demand.

3. The following statement shows the number of such books on hand on the 31st March 1898 and their value:—

Date of Edition	Name of Book	No. of Copies on hand on 31st. March 1898	Price per Copy			Total price			Remarks
	Malayalam		Rs.	As.	P.	Rs.	As.	P.	
1892	First Reader Part II	43	0	2	3	6	0	9	There being only *a few copies* of Malayalam First Book I Part, Duncan's Geography of Asia, Arithmetic Part I and Anglo-Canarese V Reader remaining unsold, these have not been entered in this list.
1892	Fourth Reader Part I	38	0	6	3	14	13	6	
1893	Fourth Reader Part II	779	0	6	9	328	10	3	
1891	Duncan's Geography of Europe	1998	0	2	3	280	15	6	
1892	Sanitary Primer	91	0	1	9	9	15	3	
1884	Agricultural Class-Book	502	0	2	0	62	12	0	
1891	First Book of Agriculture	726	0	4	6	204	3	0	
	Anglo-Malayalam								
1893	Second Reader	1859	0	5	9	543	1	3	
1891	Third Reader	2544	0	5	6	874	8	0	
1892	Fourth Reader	2493	0	6	6	1,012	12	6	
1889	Fifth Reader	920	0	8	0	460	0	0	
	Canarese								
1892	First Reader Part II	5667	0	2	9	974	0	3	
1888	Fourth Reader Part I	58	0	7	0	25	6	0	
1889	Fourth Reader Part II	1236	0	5	6	424	14	0	
	Anglo-Canarese								
1893	Second Reader	842	0	5	9	302	9	6	
1891	Third Reader	1866	0	6	0	699	12	0	
1889	Fourth Reader	1972	0	6	6	801	2	0	
	Total . . .					7,025	7	9	

4. I am not in possession of the full accounts regarding the sales effected since the 31st March 1898, but anyhow these could not have been much. A statement of books on hand on the 31st March 1899 will be prepared and submitted later on as early as practicable. The above statement prepared up to 31st March last would shew that, out of a total of Rs. 7,025 that ought to be realized by the sale of the books therein shewn, a sum of Rs. 5,620, after deducting 20 per cent or Rs. 1,405 towards commission for such sale, has been already expended by the Mission in paying to the Press the cost of printing and binding and to Government the net profits.

5. The question therefore is 'How is the Mission to recoup itself to the extent of the said sum of Rs. 5,620?'

6. The answer is simple. Government must either purchase all the copies by paying the Mission the said sum of Rs. 5,620 and use them any way it likes or must notify their compulsory use in Schools till the copies are all sold. In the former case the Mission would be neither a gainer nor loser, because this would be simply giving back to the Mission what it spent already in paying the Press and the Government. In the latter case the Mission would no doubt profit itself by getting the small commission of 20 per cent or Rs. 1,405.

7. With this view I lately addressed the Director of Public Instruction (Dr. Duncan) several letters, dated 11. 8. 97, 27. 11. 97, 2. 6. 98 and 24. 8. 98, and his replies are contained in his Proceedings Nos. 5755 $\frac{5755}{17.\ 5.\ 98}$, 8064 $\frac{8064}{25.\ 7.\ 98}$ and 12826 $\frac{12826}{10.\ 11.\ 98}$.

8. It is very regrettable that, while in the abovesaid Proceedings the Director partly admits the responsibility of the Department for the loss occasioned to the Mission by the introduction of other books in the list of authorized class-books before the editions already printed were sold and promises to do his utmost to provide against such loss or at least to reduce it as much as possible, he yet contends that the Mission must itself bear the loss, if the books remain unsold in spite of such exertions.

9. In paragraph 3 of Proceedings No. 5755 / 17. 5. 98 the Director says—"The Director is prepared to recommend to Government the writing off of the value of such books so as to enable the Mission to realize the expenditure incurred on such books." It is difficult to understand what the Director means thereby, but if he means that the Mission would be paid the abovesaid sum of Rs. 5,620 expended by it in paying the Press and the Government on account of such books, this is all that we want, and the copies will be at once made over to the Director.

10. No doubt, according to the conditions laid down in paragraph 8 of Mr. Grigg's letter No. 753 dated 9th February 1884, embodied in G. O. No. 317, Educational, dated 9th June 1884, it was open to the Mission to pay *monthly* to Government the difference between the net cost of printing and binding the copies sold and the sale-proceeds minus 20 per cent, in which case the present claim of the Mission on Government would have been only to the cost of printing and binding the copies now on hand. But the Mission having, as explained in paragraph 2 (v.) and (vi.) above, in order to facilitate the accounts, chosen to remit to the Treasury before-hand, the balance after deducting the commission claimable and the cost of printing and binding from the total value of an edition according to Mr. Grigg's later Proceedings No. 4113 / 19. 6. 84, the balance so paid on the copies now remaining unsold must be clearly refunded to the Mission. Further, the revised conditions in Mr. Grigg's Official Memorandum No. BB / 635, dated 13th September 1888, under which the editions in question were printed and published, contained no clause whatever relating to any payment to Government, so that it was not necessary for the Mission to make such payment, and the Government can therefore have no claim to retain what the Mission was neither required nor bound to pay.

11. It is therefore but fair and equitable that Government should now refund to the Mission the said net profits on the books now remaining unsold along with the cost of printing and binding such books, which together amount to Rs. 5,620 or 80 per cent of the saleable value of the books, as explained in paragraph 4 *supra*.

12. The Director's contention in paragraph 4 of his Proceedings No. 8064 / 25. 7. 98 that the Mission was, under the G. O. of 1884, an agent of Government in that it received 20 per cent of the sale-proceeds as remuneration for its work as agent, and at the same time a mere purchaser in that it paid to Government the difference between the amount to be realised by the sale of books minus 20 per cent and the cost of printing and binding, is clearly inconsistent and untenable. It is not because the books do not find a sale now that the Mission wishes to throw the cost on Government. If the Mission had undertaken the work as a matter of pure speculation, it had of course nobody to blame but itself. The Mission has been always publishing books of its own, some of which are lying unsold; but in no case has it asked Government or others to save it from such loss. The case of the Government Copyright Books is, however, quite different. The editions were printed for Government and under the distinct orders of the Director. The fact that the Mission, rightly or wrongly, paid the Government in advance the net profits on an entire edition for the sake of greater simplicity in accounts cannot alter the character of the Mission from that of an agent to a mere purchaser.

13. The Director in the last paragraph of his Proceedings, No. 12826 dated 10th November 1898, says that he "will be glad to do whatever is possible to enable the Mission to clear off the stock on hand; a Notification will soon be published in the *Gazette*, placing such of the books as have been doubly underlined in the list enclosed in the Superintendent's letter of the 2nd June last, and the Inspecting Officers concerned will also be requested to see that these books are brought

to the notice of all schools under public management in which Malayalam or Canarese is taught." But what I am afraid is that none of these measures, even if adopted, will in any way tend to effect the actual sale of the books in question, for, the Managers of Schools, who have complete liberty in the selection of books and who have already introduced other books, are not likely to discontinue their use all at once in favour of these books; and further the schools under public management in which Malayalam and Canarese are taught being few, it will take many many years before the copies are all sold.

14. If the present case is governed by Mr. Grigg's letter, No. 753 dated 9th February 1884, then there can be no doubt that the Mission was only an agent for Government in the publication and sale of the books. But seeing that the contract under the said letter was expressly brought to a termination on the 31st March 1889, as notified in Mr. Grigg's Official Memorandum No. BB / 635 dated 13th September 1888, and that it was under this latter Proceedings that the editions in question were undertaken, the point for determination is whether the said Official Memorandum No. BB / 635 constitutes the Mission still an agent or a mere purchaser of the editions. It is impossible that with so many conditions therein laid down the Mission could have been contemplated to be a purchaser at its own risk, and there are distinct indications in it to show that the Mission was intended to be only an agent. For instance, one of the conditions is "that the Society will make proper arrangements for securing the ready sale of the books in the Malayalam and Canarese Districts in the Presidency." Such a condition was quite unnecessary and uncalled-for, if the sale of the books was the Mission's own concern as purchaser of the edition. So also there is a clause "that if any edition appear faulty in any respect, the Society agree to pay as damages to Government such amount as may be determined by the Director etc." A mere purchaser can certainly be under no such obligation to pay penalties to the seller. If the Mission was an absolute purchaser, then the Director had no right to prescribe the number of copies of each edition, size, type, paper, and other particulars, or to demand periodical returns and accounts, or to direct that the selling price of the books should not be altered without his sanction.

15. I beg to submit that the Mission was constituted only an agent for Government in the matter of the editions in question; and this is corroborated by the circumstances in other cases that stand in clear contrast to those in the present case. For example, in the Director's Notice, dated 26. 5. 93, inviting applications for permission to print and sell certain Government Copyright Books, it was expressly stated in Note 2 to clause (5) of paragraph 1 of the said Notice, that "no restriction regarding the selling price will be imposed; this will be left to settle itself by competition." Again, in my letter to the Director, dated 23. 8. 96, regarding the reprint and sale of certain Government Books, I referred in detail to the system under which the editions now in question were printed, published and sold by us, and asked the Director whether the same arrangement held good in the case of the said books to be reprinted, and the Director in his Proceedings, No. 13481 dated 14th December 1896, said—"With reference to the last paragraph of the letter the Superintendent is permitted to print the books at his cost and risk, the fixing of the price and the sale of the books being on his own responsibility." In the case in dispute, however, the condition is that "no alteration in the price be made without the Director's express sanction", which sufficiently shows that, the price in this case alone being thus entirely subject to the control of the Director, the responsibility for the sale also lies clearly on the Director, that is, the Government.

16. The Director must admit that it was nothing but the sudden change in the educational policy in giving Managers of Schools unrestrained freedom in their choice of text-books that has to answer for the loss now complained of by us; and that this is so is patent from the fact that Mr. Monro, who once ordered the discontinuance of Government Copyright Books by Notification, dated 23rd June 1894, was afterwards, on our representation, pleased to partially cancel the said order by a subsequent Notification, dated 14th August 1894. The said policy, however, having been once contemplated, did not take long to be put into practical effect, resulting to us in the loss in question.

17. But, whatever may have been the cause for the non-sale of the books in question, the fact remains that the Director ought to make some arrangement for relieving us immediately from any losses, and on his failure to do so, I am, both under Mr. Grigg's letter No. 753 dated 9th February 1884 and his Official Memorandum No, BB/635 dated 13th September 1888, entitled to an appeal to Government.

18. I therefore beg that, on a kind and favourable consideration of the above circumstances, Government may be pleased to sanction payment to us of Rs. 5,620 shewn in paragraph 4 *supra*, and that the books in question may be taken over by Government.

I beg to remain,
Sir,
Your most obedient Servant

BASEL MISSION
BOOK & TRACT DEPOSITORY
MANGALORE.

S. Hamm.
Superintendent.

Educational (1899) Department.

CURRENT No. 1053

Desp

Paper put up for Govt Nos 246 & 1589

Cuts 672 & 1053.

From The Director of Public Instruction, Madras.

Order Endorsement :— No. 397, d/11-8-99.

Forwarded to the Govt. Solicitor with copies of the Govs noted in the margin, with the request that he will advise Govt. as to its legal position in the case

from order/

11/8 S. VIII 99

No 317 Ed/d 9-6-84. No. 7631
" 508 " " 30-8-88.
" 169 " " 27-3-89.

Dated 11 July 1899.

Received

Registered

Enclosures 4.

Spare copies

SUBJECT.

Returning with remarks the memorial of the Basel Mission Book and Tract Depository, Mangalore in regard to the slow sale of the Government copyright books.

DEPATCHED
11 JUL 1899

To the Govt. Solicitor.

alg 8/8/99.

Dft 8/8/99

For Record office

Please put up all Govs subsequent to Go no 317 Ed dt 9-6-84 on the subject of printing & publishing Govt copyright books; as also the Gazette notifications referred to in the memorial soon please.

Retd to RO for papers 11/8 20-7-99

Dept 10-7-99

Pub 19-7-99

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Official Memorandum. No B.B/635 d/13th Septr. 1888.

Flag B

Go 5082 dg 30-8-88

Under recent instructions from Government, the Director of Public Instruction has the honour to enquire whether the Superintendent, Basel Mission Book and Tract Depository, Mangalore, will undertake to print and sell Government books with Government copyrights free of charge of either those now printed by the society or such others as may be offered to them for tender, on the following conditions:-

That an estimate for printing a new edition/ shall be submitted to the Director, who will after scrutiny fix the amount of charge to be incurred on account of printing and binding as well as the price of the book at which it is to be sold retail anywhere in the Presidency, and that no alteration in the price be made without the Director's express sanction. That the proofs shall be submitted to this office for correction and revision, if necessary, before printing. That the names of printers and the price of the book, and the reservation of Government rights shall inavariably be printed on the Title page and on the cover of each book printed. That the society will make proper arrangements for securing the ready sale of the book in the Malayalam and Canarese districts in the Madras Presidency. That the society give timely notice of any books running out of stock. That the society render all such returns and accounts as may be required by the Director. That in all matters of dispute, the society abide by the decision of the Director subject to appeal to Government. That the society absolutely comply with the rules of the Director in regard to the number of copies of each edition, size, type, size paper and all other particulars and that no fresh edition be printed without obtaining such formal sanction. That if any edition appear faulty in any respect the society agree to pay as damages to Government such amount as may be determined by the Director, in communication with the Superintendent, Government Press, subject to appeal to Government.

2. The Superintendent is also requested to state whether he will purchase the Government books which are now with him for sale

for a valuation to be approved by the Director.

3. The Superintendent will propose a date from which the change may take effect. It is observed that the present system will terminate at the latest on the 31st March 1889 and that these Proceedings are to be regarded as notice of such determination of the present arrangement. Further that the Director does not bind himself, when a new edition of a book is required to limit himself to the tenders forwarded by the society. He holds himself free to accept any tenders which he considers more likely to enhance the interests of the public.

(Sd) H.B.Grigg,

Director of Public Instruction.

/True Copy/

D Grimaw

Director of Public Instruction.

1892
Dept.
Enclos. No 4
To
O. No 1053

Proceedings of the Director of Public Instruction.

Read-Letters from the Superintendent, Basel Mission Book & Tract Depository, Mangalore, dated 9th and 27th November 1897 and 4th February 1898.

No 5755 dated 17th May 1898.

The Basel Mission Depository was not constituted the agent of Government in the sense in which the Superintendent understands it. The conditions on which the printing, publication and sale of Government copyright books in Malayalam and Canarese were entrusted to that body are mentioned in paragraph 8 of Mr.Grigg's letter No 753, dated 8th February 1884, embodied in G.O.No.317, Edl., dated 9th June 1884. The copyright of the books vesting in Government, no person or persons had power to use in any manner any matter contained in those books. Consequently the sanction of Government was necessary for the Basel Mission to print and sell these books. This permission was granted subject to certain conditions and if, owing to slow demand for any of the books, a large stock was left behind Government is not bound to indemnify the mission for such loss. No doubt, one of the conditions was, that the number of copies of each edition of a book should be approved by the Director; but if the company apprehend that the number of copies proposed to be printed of any book was too large it was open to them to have laid the facts clearly before the Director.

2. The mission was required to pay monthly to Govt the difference between the net cost of printing and binding the copies sold and the sale proceeds minus 20 per cent but the Director is not aware that the mission was ready to pay the difference between the amount to be realized minus 20 per cent and the net cost of printing and binding. The Director is not able to see how the mission could make Government liable to make good the so called loss and the Superintendent is requested to explain the matter more fully.

The director is mistaken here. He refers to the arrangement in force before 31st March 1889; but the mission refers to the arrangement in force after the 31st March 89.

books are being sold slowly and to state whether he is prepared to reduce their price. The Director is prepared to recommend to Government the writing off of the value of such books to enable the mission to realize the expenditure incurred on such books. He is also prepared to grant any further and reasonable concessions the Superintendent may propose.

/Sd/ D.Duncan,

Director of Public Instruction.

/True Copy/

D. Duncan

Director of Public Instruction.

1894
Dept.
Enclos. No 3
T.
O. No 1053

Proceedings of the Director of Public Instruction.

Read-Letter from the Superintendent, Basel Mission Book and Tract Depository, Mangalore, dated 2nd June 1899.

No. 3064, dated 25th July 1898.

The Superintendent, Basel Mission Company, i[s] in saying that the mission was precluded from making any representation to the Director in regard to the number of co[pies] to be printed. Paragraph 8 of Mr. Grigg's letter embodied G.O.No. 317, Educational, dated 9th June 1884, mentions the conditions on which the printing, publication and sale of Government copyright books was entrusted to the mission. first condition was that it should "comply absolutely with t[he] order of the Director in regard to the number of copies of e[ach] edition, size, type, paper and all other particulars....." T[his] clause could never have been intended to mean that the missi[on] was prohibited from making any representations at all. Wh[at] was contemplated was that the Director's decision in the mat[ter] was final. It was open to the Superintendent to represent facts to the Director, and if, even after the representation, Director adhered to his original decision, no appeal lay agai[nst] the order.

2. It is true that, in June 1894, the Anglo-Vernacular and Vernacular readers were removed from the list of approved te[xt] books, with effect from January 1895. But, on the Superintend[ent's] representation, so much of the notification as related to Malayalam, Canarese, Anglo-Malayalam and Anglo-Canarese reade[rs] was, in the succeeding August, cancelled and the Director do[es] not think that the first notification would have affected t[he] sale of the books to the extent the Superintendent makes ou[t]. And, even if it had, the mission does not seem entitled to a[ny] redress.

3. The Superintendent seems to be under a misapprehensio[n] thinking that the responsibility for the sale of the book[s] in Government. The fact that the price, size, type &c of [the] were fixed by the Director does not throw the responsibil[ity] for their sale on him. The right reserved to the Direc[tor]

see that books are offered to the pupils at a reasonable price and that the type, paper &c are such as not to be injurious to the eyesight of the pupils.

4. In the G.O. of 1884 quoted above, the mission, as the agent of Government, was required to pay monthly to Government, the difference between the net cost of printing and binding the copies sold and the sale proceeds minus 20 percent, this 20 per cent being the remuneration for its work as agent. That the mission paid to Government the difference between the amount to be realized minus 20 per cent (ie.) the value of the whole stock of books and the net cost of printing and binding not only amounted to a purchase of the whole stock of books by the mission, but also completely changed its position, so far as these books were concerned, from that of an agent to that of a mere purchaser. And, just as a purchaser cannot expect redress from the vendor on the mere ground that the article purchased does not find good sale in the market, the mission has no claim against Government if the books, which have become their private property, are not selling. The request of the Superintendent for a refund of the net amount spent on the books now on hand seems, therefore, untenable.

5. With reference to the Superintendent's strictures on the conduct of the inspecting officers in the matter of the use of text books the Director does not know what ground there is for the suspicion that undue pressure is brought to bear on managers of schools by inspecting officers. Managers of schools have unrestrained freedom in their choice of text books and the officers of the Department have no right to interfere. If the Superintendent will bring to the notice of the Director specific instances in which undue influence for or against the use of a certain text-book has been exerted by any inspecting officer, steps will be taken to put a stop to such a practice which is clearly against the rules. In the case of Government schools, however, the Director as manager may interfere, as requested by the Superintendent; but such a step would not materially help to clear away the stock, the number of Government schools in which Malayalam and Canarese are taught being very small. Should, however, the Superintendent instructions will be issued to the inspecting off that the Government copyright books in Malayalam an are used as class books until further orders, in all 1898. schools in which these languages are taught. The D regrets that he cannot see his way to grant any furth concession.

(Sd) D.Duncan,

Director of Public Instructio

/True Copy/

D Duncan

Director of Public Instruction.

Ma

Proceedings of the Director of Public Instruction.

Read-Letter from the Superintendent, Basel Mission Book and Tract Depository, Mangalore, dated 25th August 1898 & 17th October 1898.

No 12826, dated 10th November 1898.

The Director regrets that he cannot see how, in the face of the facts stated in paragraph 4 of Proceedings, No. 3064, dated 25th July last, the Superintendent still adheres to his former opinion that Government guaranteed the sale of the books. He bases his opinion on the fact that quarterly statements of the sale of books were furnished to the Director. These statements were necessary only in cases in which the Depository as agents of Government sold books in retail and not in cases where the Depository purchased the whole stock of books themselves. The Director is fully alive to the meritorious work which the Depository has been doing towards the distribution of good and healthy literature in Malayalam and Canarese and the difficulties to be contended against in the carrying out of this object and will be glad to do whatever is possible to enable the mission to clear off the stock on hand. A notification will soon be published in the Gazette formally placing such of the books as have been doubly underlined in the list enclosed in the Superintendent's letter of the 2nd June last and the inspecting officers concerned will also be requested to see that these books are brought to the notice of all schools under public management in which Malayalam or Canarese is taught.

(Sd) D.Duncan,

Director of Public Instruction,

/True Copy/ D Duncan

Director of Public Instruction.

42
32

1890
Dept.
Enclos. No
C. N. 1053

CURRENT.

No. 1053

No. 7631

OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION,

Madras, 11 July 1899.

From

THE HONORABLE MR

D. DUNCAN, M.A., D.SC., LL.D.,

DIRECTOR OF PUBLIC INSTRUCTION,

Madras,

To

THE SECRETARY

TO GOVERNMENT,

~~Educational~~ DEPARTMENT,

Fort St. George.

SIR,

In returning Government endorsement No. 244, Educational, dated 9th May last, I have the honour to submit the following remarks.

2. In 1884, Mr. Grigg, when submitting his recommendations for the abolition of the Central Book Depot, proposed to entrust the printing, publication and sale of Government Copyright books in Malayalam and Canarese to the Basel Mission Book and Tract Depository, Mangalore, subject to certain conditions mentioned in paragraph 8 of his letter No. 753, dated 9th February 1884, embodied in G.O.No. 317, Educational, dated 9th June 1884. Among these conditions were the following:-that the Society comply absolutely with the order of the Director in regard to the number of copies of each edition to be printed, the size, type, paper, &c, and that the Society print and sell at its own charge, on estimate approved by the Director, receiving as remuneration 20 per cent of the sale proceeds and paying monthly to Government, the difference between the net cost of printing and binding the copies sold and the sale proceeds minus 20 per cent. These conditions were approved by Government in the order quoted above, and Mr. Grigg, when communicating the order, gave the Society liberty to purchase for cash, before sale to the public, an entire edition, deducting from the total value the commission

Ed. Cor.
6 1,000--28-10 97

claimable and remitting the balance to the treasury. In regard to such editions, the society was only required to submit a quarterly statement showing the number of copies sold during the quarter.

3. This system was in force till 1888, when Mr.Grigg, in his Proceedings No.B.B.635, dated 13th September 1888, (copy enclosed) gave notice to the society that the system then in force would cease on 31st March 1889. He proposed certain other conditions under which the printing and sale of Government copyright books should be carried on and enquired if the society was willing to continue to do the work on the conditions mentioned. These conditions were accepted and the society undertook to continue the work. Though no mention was made in the new set of conditions as to payment to Government of the cost of each edition, deducting editing charges and commission, yet the society continued to pay to Government the cost of the editions as before.

4. This continued till 1894, when Mr.Monro, who was acting as Director, published a notification to the effect that the Government copyright books in the vernaculars would be either revised or superseded by other books from 1st January 1895. This step was rendered necessary as the books were no longer considered suitable. But, on the representation of the Superintendent of the Basel Mission Book and Tract Depository, so much of the notification as related to Malayalam, Canarese, Anglo-Malayalam and Anglo-Canarese readers was cancelled and the books were permitted to be in use. The Superintendent's contention is, that this temporary withdrawal of recognition has caused considerable loss to the society in that managers of schools have given up these books in favour of others and that Government should indemnify the society for the loss.

5. The Superintendent addressed me more than once on the suoject and copies of my orders are enclosed (Proceedings Nos.5755, dated 17th May 1898, 8064, dated 25th July 1898 and 12826, dated 10th November 1898). The revised conditions mentioned in Mr.Grigg's Proceedings of 1888 make no mention of the permission previously given to the society to purchase an entire edition deducting from the total value the commission claimable and remitting the balance to the treasury. As stated by the Superintendent in paragraph 10 of his memorial, it was not necessary for the society to make such payment. The fact that the society made such payment, rightly or wrongly, completely changed its relation to Government from that of an agent to that of a purchaser, and, as a purchaser, the society cannot claim any redress from the vendor.

6. In paragraph 14 of the memorial, the Superintendent says that the condition that the society should make proper arrangements for securing the ready sale of the books in the Malayalam and Canarese districts in the Presidency was unnecessary, if the society was a purchaser. But here the Superintendent overlooks the circumstance that the Department was bound to see that the school-going population enjoyed due facilities for obtaining school books. The Proceedings of 1888 did not contemplate that the society should be a purchaser. As it was only intended to consitute the society an agent, such a condition as the above was necessary. Similarly as regards the condition that if any edition should appear faulty in any respect, the society should be called on to pay as damages to Government such amount as may be determined, the books being Government copyright. The Superintendent contends that, if the mission was an absolute purchaser, the Director had no right to prescribe the number of copies of each edition, the size, type &c. The society was not originally intended to be an absolute purchaser; but it was only the subsequent conduct of the society in paying for the whole of an edition, although there was no stipulation to that effect, that converted the society from an agent into a purchaser. In regard to the conditions referred to in paragraphs 14 and 15 of the memorial, I would point out that these conditions were necessary to place the books which were Government Copyright within easy reach of the pupils and to enable the Department to see that the books offered for sale were properly got up and were not injurious to the eye-sight of the pupils. It is true that, in a particular instance, on the Superintendent representing that the usual course would cause delay, he was permitted to print books at his cost and risk,

the fixing of the price and the sale of the books being on his own responsibility. But this permission does not in any way affect the case. It is open to the Director to impose any conditions and to grant any concessions he likes and it is equally open to the society to accept those conditions or not. The mere fact that it was stipulated that no alteration in price be made without the Director's sanction does not lay the responsibility for the sale on the Director, when the whole edition has been purchased by the society. The purchase of the whole of an edition changed the position of the society. No doubt there was a change of policy in giving managers of schools freedom in their choice of text-books from an approved list. Whether the loss now complained of by the society was due to this change of policy or whether the society has itself to blame for it, is now the question. My opinion is that the society, by constituting itself the purchaser, took upon itself the responsibility for the sale of the books. It would not be equitable to comply with the request of the Superintendent that the whole stock of books should be taken over by Government and the cost paid to the society; but such of the books as are reported by the Superintendent not to find good sale may be brought to the special notice of inspecting officers so that they may be more largely used in schools under public management. In regard to their use in schools under private management, the Department cannot interfere.

I have the honour to be,

Sir,

Your most obedient servant,

D Duncan

Director of Public Instruction.

Ed 7R1

Educational (1899) Department.

N

CURRENT No.

To await the report of the Govt Solicitor called for in memo no 397 & 11-8-99

memo no 397 & 11-8-99

ahe 21/8/99.

7R 19.8.99. PM 23/8/99

From The Director of Public Instruction, Madras.

Order

No. 9272

Dated 17 August 1899.

Received 18 AUG. 1899

Registered

Enclosures Nil

Spare copies

SUBJECT.

Submitting statement of books sold by the Basel Mission Book and Tract Depository, Mangalore from the 1st April 1898 to the 31st March 1899.

DESPATCHED 17 AUG 1899

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Statement of Books sold by the Basel Mission Book & Tract Depository

Mangalore from the 1st April 1898 to the 31st March 1899.

	Price per Copy	On hand at the end of 31st March 1898 or printed since	On hand on the 1st April 1899.	Sold from the 1st April 1898 to the 31st March 1899.
MALAYALAM.	Rs. As. P.			
Malayalam I. Reader Part I.	0 1 3	2		2 . 2 6
Do. I. do. „ II.	0 2 3	43	43 6 . 9	
Do. II. do.	0 1 9			
Do. III. do.	0 6 0			
Do. IV. do.	0 12 0			
„ „ „ Part I	0 6 3	38	1 . 6 3	37 14 7 3
„ „ „ II	0 6 9	779	516 217 11 .	263 110 15 3
Anglo-Malayalam I. Reader	0 1 6			
Do. II. do.	0 5 9	1859	1815 662 4 3	44 15 13 .
Do. III. do.	0 5 6	2544	2675 919 8 6	
Do. IV. do.	0 6 6	2493	2901 1178 8 6	
Do. V. do.	0 8 0	920	937 468 8 .	
Duncan's Geography of Asia	0 2 0	28	6 . 12 .	22 2 12 .
Do. do. Europe	0 2 3	1998	1939 272 10 9	59 8 4 9
Panchatantram	0 10 0			
Sanitary Primer	0 1 9	91	58 6 5 6	33 3 9 9
Agricultural Class-Book	0 2 0	502	533 66 10 -	
Dr. Gundert's Catechism of Grammar	0 3 3			
Gymnastics	0 5 0			
Malayalam Arithmetic Part I.	0 4 0	5	12 3 . .	
Grant-in-aid Code	0 4 0			
Mal. I Book of agriculture	0 4 6	726	667 187 9 6	59 16 9 6
CANARESE.				
Canarese I. Reader Part I.	0 1 0			
Do. I. do. „ II.	0 2 9	5667	5632 968 . .	35 6 . 3
Do. II. do.	0 3 0			
Do. III. do.	0 3 3			
Do. IV. do. „ I.	0 7 0	58	58 25 6 -	
Do. IV. do. „ II.	0 5 6	1236	1249 429 5 6	
Anglo-Canarese I. Reader	0 1 6			
Do. II. do.	0 5 9	842	826 296 13 6	16 5 14 .
Do. III. do.	0 6 0	1866	1856 696 . .	10 3 12 .
Do. IV. do.	0 6 6	1972	2018 819 13 .	
Do. V. do.	0 12 0	5	5 3 12 .	
			7219 1 .	188 2 3
Canarese Madras Presidency	0 2 0			
Gymnastics	0 5 0			
Grant-in-aid Code	0 4 0			

BASEL MISSION
BOOK & TRACT DEPOSITORY
MANGALORE.

From

THE SUPERINTENDENT BASEL MISSION BOOK & TRACT DEPOSITORY,

MANGALORE.

To *The Chief Secretary to Government.*

PUBLIC INSTRUCTION 16 AUG 1899 MADRAS

Madras.

Mangalore, 12th August, 1899

Sir,

Some months ago I had the honor to submit to you a letter, touching our relation to the Director of Public Instruction re the publication of certain Government Copyright Schoolbooks in Canarese and Malayalam now remaining unsold, soliciting payment of Rs 5620-- expended by the Mission for those books. In that letter I stated that I would submit later on a statement of the sale of the books during the last official year and of the stock of books on hand on the 31st March which statement I now have the honor to submit. Though there is a trifling sale of some books chiefly of the Malayalam II Reader & II for which no substitute has been published up to date, the number of copies on hand has in some instances been found to be more than given in my first letter, owing to some mistakes in counting in previous years. The amount claimable by the Mission would therefore somewhat exceed the amount stated in my letter of the 15th March, but as this was our mistake, I shall be glad if you will kindly consider our claim to be only for the amount originally mentioned.

Hoping that you will be pleased to give this matter your early and favourable attention

I have the honor to be

CURRENT NO. 1273 *Sir,*

No. 927 of 17th August 1899 *Your most obedient Servant,*

BASEL MISSION BOOK & TRACT DEPOSITORY MANGALORE.

J. Hamm.

Submitted to the Secretary to Government, Educational Department

D Duncan

Director of Public Instruction

1899 Dept. Enclos. No. To C. No.

RR No 11287A of 99.

[Edl. / 5]
8,000—20-4-98.

Educational (1899) Department.

CURRENT No. 1363

Memo No 397

From The Govt Solicitor
Madras.

For Order

Please see the previous note. Hag Z

No. 439

Dated 29—8—99

Received } 2—9—99
Registered }

Enclosures

Spare copies.

SUBJECT.

Stating that the Basel Mission has no legal claim upon Govt for the loss the Mission has sustained on the sale of certain text books.

N 2/9/99

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

CURRENT No. 1363

No. 439

Madras 29th August 1899.

From,

Ernest Barclay

Government Solicitor

MADRAS



To,

The Secretary to Government

Educational Department

Ootacamund.

Sir,

1. I beg to acknowledge receipt of your Memorandum No.397 dated 11th August 1899 with enclosures.

2. From the Proceedings of Government dated 9th June 1884 No.317, it seems clear that there was a contract between Government and the Basel Mission Book and Tract Depository Mangalore for the printing, publishing, and sale of Canarese and Malayalum Books the property of Govern-ment and also for the sale of the stock of Malayalum and Canarese Books then on hand in the Central Depôt on the conditions set out in para 8 of the letter No.753 dated 9th February 1884 from the then Director of Public Instruction to Government.

3. In para 2 (V) of his letter of 15th March 1899 to Government, the Superintendent of the Depository at Mangalore says that the Director in his Proceedings No.4113 dated 19th June 1884, communicating the Government Orders on the subject, prescribed certain forms of state-ments to be submitted (by the Mission) monthly showing the number of books sold, amounts realised &c; but, at the same time, gave the Mission "liberty to purchase for cash, before sale to the public, an "entire edition, deducting from the total value of the edition the "commission claimable and remitting the balance to the Treasury "and said that", as regards editions so taken, the Director would simply "require the submission of a quarterly statement showing the number of "copies sold to end of last quarter, number of copies in current quarter and balance on hand".

4. In his Official Memorandum No.BB 635 dated 13th September 1888, the Director enquired of the Superintendent of the Depository whether he would undertake to print and sell Government Books with Government

copy-rights free of charge, either those then printed by the Society or such others as might be offered to them for tender, on the conditions set out in the Memorandum. This Memorandum did not give the Society the liberty to purchase an entire edition granted by the Director's Proceedings No.4113 of 19th June 1884 and, by this Memorandum the Director gave the Mission notice that the then existing system would terminate on the 31st March 1889.

5. In para 2 (VI) of his letter of 15th March 1899, the Superintendent explains that, there being a large number of Branch Depôts and Colporteurs connected with the Mission Central Depôt at Mangalore, the Superintendent did not always find it possible to get accounts of monthly transactions from all these within the prescribed date (See condition (d) of para 8 of Director's letter No.753) and that, as the alternative proposal of the Director in his Proceedings No.4113 regarding payment in advance of the amount due on an entire edition tended to relieve the Mission of so much work in accounts, the Superintendent followed the latter mode, <u>according to which alone has the Mission been since working all along.</u> In other words the Mission has, for its own convenience in matters of account, instead of selling books on account of Government, been availing itself of the liberty granted by the Director's Proceedings No.4113 and been purchasing entire editions of books.

6. The Superintendent in para 2 (VII) of his letter refers to the Director's Official Memorandum No.BB 635 and in (VIII) says that the Superintendent, in his reply dated 3rd October 1888 accepted the new conditions and that the work continued to be done by the Mission.

7. In para 2 (IX) of his letter, the Superintendent says that the new conditions specified in the Official Memorandum No. BB 635 dated 13th September 1888, unlike the Director's letter No.753 to Government, contained no clause regarding payment to Government of the net amount (realised by the books) calculated by deducting 20 per cent commission and cost of printing and binding from the selling price of the edition. This is true, but it is not apparent what this has to do with the question under consideration and, in BB 635, the Director asked the Superintendent whether he would undertake to print and sell Government Books with Government copyright free of charge. In (X) the Superintendent says the Mission continued paying Government as before <u>in advance</u> in each case the net amounts so calculated i.e. the Mission continued to avail itself of the liberty given it to purchase entire editions, with, as the Superintendent says, the result that a large amount so paid is outstanding. It appears that by Notifications dated 23rd June and 23rd July 1894, the then Director ordered that the Government copyright books in question should be either revised or be superseded by other books with effect from 1st January 1895 and that the use of the books in their then form would not be permitted from that date. This, of course, materially affected the sale by the Mission of the books it had purchased from Government and, on a representation by the Mission to the Director, the Notifications relating to Government Copyright Canarese, Malayalum, Anglo Canarese and Anglo-Malayalum Books were temporarily cancelled. The Mission's market however had apparently been spoilt, for, according to the Superintendent, the Managers of Schools having been given the option of using any book out of a list of sanctioned text books, many copies of the Government Copyright Editions remained unsold and are now in the Mission's stock without any demand, the result being a loss to the Mission of Rs.5620.

8. In para 6 of his letter, the Superintendent contends that Government must either <u>purchase</u> all the copies by paying the Mission Rs. 5620, thereby admitting that the books are the property of the Mission or notify their compulsory use in schools till the copies are all sold. I do not see that Government is legally bound to adopt either of these courses. The Mission, for its own convenience in matters of account, purchased the books from Government, the Managers of Schools do not care to buy the books so purchased and the Mission has made a bad bargain or rather a series of bad bargains and, from a legal point of view, the Mission must take the consequences.

9. The contentions in paras 14 and 15 of the Superintendent's letter are not applicable to the case under consideration. No doubt the Mission was the Agent of Government for the sale of such books as the Mission did not buy, but the Mission, for its own purposes and notwithstanding the altered circumstances brought about by the Official Memo BB 635, continued, admittedly, to avail itself of the liberty to purchase entire editions and, in such cases, was clearly

not the agent of Government for the sale of such books but their purchaser.

10. In coming to the conclusion I have, I have done so - almost entirely upon the Superintendent's letter which shows - clearly, in my opinion, that the Mission has no legal claim upon - Government for the loss the Mission has sustained or may sustain.

11. I return the papers sent me and

I have the honor to be

Sir,

Your Obedient Servant

Ernest Bardez

Government Solicitor

Educational Department.

Cur: No. 672 of 1899, dated 15th March 99, from the Supdt., Basel Mission Book and Tract Depository, Mangalore.

Cur: No. 1053 of 99, dated 11th July 99, from the Director of Public Instruction.

The claim of the Basel mission society for a refund of Rs 5620 on account of text books printed and sold by that society.

For Orders.

In 1884 the Director of Public Instruction submitted proposals for closing the Government Central Book Depot at Madras and for entrusting the Basel Mission Society at Mangalore with the printing, publication, and sale of Canarese and Malayalam books, the property of which vested with Government and with the sale of the stock of such books then on hand in the Central Book Depot. The conditions to be imposed on the Society were as follows:-

" (a) that it complies absolutely with the order of the Director in regard to the number of copies of each edition, size, type, paper and all other particulars

and

Page 6 of 8. no 317 Edl d/4-6-84
Flag A.

and that no fresh edition be printed without obtaining such formal sanction. Reservation of Government rights to be set forth on the title page of each book;

" (b) that, if required, all proofs shall be passed by the Director before printing;

" (c) that the price of sale shall be that fixed by the Director, and that no alteration in that price be made without his express permission;

" (d) that the Society renders all such returns and accounts as may be required by the Director;

" (e) that it undertakes all risk for books in its custody and is responsible for loss and damage, and provides such reasonable security as the Government may demand;

" (f) that it vends all books entrusted to it for publication and sale at its branch depots and by colporteurs;

" (g) that it prints and sells the books at its own charge, on estimate approved by the Director, receiving as ~~re~~ remuneration

remuneration 20 per cent of the sale-proceeds and paying in monthly to Government the difference between the net cost of printing and binding the copies sold and the sale-proceeds minus 20 per cent;

" (h) that in all matters of dispute the Society abides by the decision of the Director subject to appeal to Government; and

" (i) six months' notice may be given by either party of termination of agreement".

Flag A.

These proposals were approved in G. O. No. 317 Edl. dated 9th June 1884.

3. Under this arrangement the Society was required to print and sell at its own charge all Government Malayalam and Canarese books on estimate approved by the Director and, after deducting from the sale-proceeds 20 per cent commission and the net cost of printing and binding the copies sold, to pay the balance to Government every month. To avoid submitting monthly a number of statements regarding the sale

of

of books, the Society was allowed by the Director of Public Instruction to purchase at the outset an entire edition, and, after deducting the commission and the cost of printing and binding from the total sale-value of the edition, to pay the balance to Government.

Para 2 (v) of the petition & para 2 of the D.P.I's letter.

3. In 1888 the Director of Public Instruction gave notice to the Society that the above arrangement would terminate on 31 st March 1889 and enquired whether it would undertake to print and sell Government books with Government copy-rights, free of charge on the following conditions:-

Hagl.

" (1) that an estimate for printing a new edition shall be submitted to the Director who will after scrutiny fix the amount of charge to be incurred on account of printing and binding as well as the price of the book at which it is to be sold retail any where in the Presidency and that no alteration in the price be made without the Director's express sanction;

" (2) that the proofs shall be submitted to the Director's office for ~~cor-~~ correction

correction and revision, if necessary, before printing;

" (3) that the names of printers, the price of the book and the reservation of Government rights shall invariably be printed on the title-page and on the cover of each book printed;

" (4) that the Society will make proper arrangements for securing the ready sale of the books in the Malayalam and Canarese Districts in this Presidency;

" (5) that the Society gives timely notice of any books running out of stock;

" (6) that the Society renders all such returns and accounts as may be required by the Director;

" (7) that the Society absolutely complies with the order of the Director in regard to the number of copies of each edition, size, type, paper, and all other particulars and that no fresh edition be printed without obtaining such formal sanction;

" (8) that if any edition appear

faulty

faulty in any respect the Society agrees to pay as damages to Government such amount as may be determined by the Director in communication with the Superintendent, Government Press, subject to appeal to Government;

" (9) that in all matters of dispute the Society abides by the decision of the Director subject to appeal to Government."

The Society replied that it was prepared to print and sell Government books in the Canarese and Malayam languages provided a special contract was made about books not prescribed for schools such as Dictionaries and Scientific books &c. which were not likely to have a good sale and about school books for the highest classes of which only a few copies could be sold every year. In these cases it was proposed that Government should pay a bonus stipulated in each separate instance according to the nature, size and demand of the work. At the same time the conditions proposed by the Director were all agreed

to

Flag R.

to. Upon this the Government said that it did not object to the arrangement, provided that the concession was terminable at will.

Para 5 P.P. no 169 Col d1 27-3-1889 - Flag D.

4. Under this arrangement the Society was not required to pay Government the balance of the sale-proceeds of books after deducting commission and cost of printing and binding the books sold. Nevertheless it continued to pay this and the Director of Public Instruction continued to receive the amounts without any question.

12. The municipal commissioners continued to purchase the books - Flag

5. In 1894 the Director of Public Instruction gave notice in the Fort St George Gazette that the Government Malayalam, Canarese, Anglo-Malayalam and Anglo-Canarese copyright books, among others, would either be revised or be superseded by other books with effect from 1st January 1895 and that the use of the books in their then existing form would not be permitted after that date. In his petition read above the Superintendent of the Basel Mission Book and Tract Depository represents that al-

Page 1119 - Part II of the Fort St George Gazette dt 17th July 1894.

although

Page 1300 - Part II of the Fort St George Gazette dt 24th August 1894.

although the above notice was cancelled so far as it related to Malayalam, Canarese, Anglo-Malayalam, and Anglo-Canarese books, yet tha Managers of schools have since then been given full option to use any book out of a long list of sanctioned text-books, and many copies of the Government copy-right editions printed by the Mission therefore remain unsold and are now lying in stock without any demand. The value of these books, it is stated, comes to Rs. 7,025 - 7 - 9 and after deducting 20 per cent commission (Rs 1,405) the net amount paid by the Mission to itself in the shape of printing and binding charges and to Government in the shape of net proceeds of sale on their account is Rs 5,620. The Superintendent accordingly requests that a refund of this amount may be made and the books taken over. He contends that the books were printed for Government and that the Society was only an agent of Government for this purpose and for selling the books and in support of this contention relies chiefly on conditions (1), (4),

If so why did the Mission pay the purchase money?

(6)

(6), (7) and (8) specified in para 3 above.

6. The Director of Public Instruction to whom the petition was referred for remarks observes that the conditions referred to by the Superintendent were imposed because the original intention was that the Society should be only an Agent and not an absolute purchaser but that the fact that the Superintendent paid over to Government the net sale proceeds after deducting commission and cost of printing and binding even after the arrangement of 1889, has completely changed his relation to Government from that of an agent to that of a purchaser, and that as a purchaser, he cannot claim any redress from the vendor or Government. The Director is also of opinion that by constituting himself the purchaser the Superintendent has taken upon himself the responsibility for the sale of the books and that it would not therefore be equitable to comply with the request of the Superintendent that the whole stock of books should be taken over by Government and the cost paid to the

Society

Society .

7. The point for the determination of Government is stated in para 14 of the memorial to be whether Mr. Grigg's official Memorandum No. B. B. / 635 dated 13th September 1888 constitutes the Mission still an agent or a mere purchaser of the editions. There can be no doubt that the Mission was an agent under the first arrangement sanctioned in G. O. No. 317 Edl. dated 9th June 1884. The Superintendent, Basel Mission, contends for the reasons stated in paras 14 and 15 of his memorial that under the new arrangement approved by Government in para 5 of G. O. No. 169 Edl. dated 27th March 1889, the Mission is still an agent. The Director of Public Instruction also appears to hold the view that the Mission was an agent under the new arrangement, but considers that the fact that the Society continued to make payments to Government of the cost of each edition deducting editing charges and commission converted the Society from an agent to a purchaser (paras 5 and 6 of the Director of Public Instruction's

Flag C.

They continued to purchase

Flag A.

Flag D.

Instruction's letter). This latter view, it is submitted, cannot be correct. It is not understood how the [illegible] payments, (which were made to Government by the Society as agent under the first arrangement and afterwards under the new arrangement apparently wrongly made by it under a misapprehension) can have converted the Society from agent to purchaser. Either the Society was agent under the new arrangement or purchaser, and the subsequent fact of payments wrongly made cannot alter its position.

The Mission is now purchasing & cannot now go back on that.

11. IX 97

They purchased & so must accept the position as purchasers.

11. IX 97

8. The fact appears to be that neither the Director of Public Instruction nor the Basel Mission understood the precise nature of the second arrangement. The Mission appears to have regarded the second arrangement to be the same as the first and continued to make from 1889 to 1894 to Government the payments already referred to. The Director of Public Instruction received these payments without question, which he ought not to have done under the new conditions, and hence the present difficulty.

difficulty . It does not seem to be the case that Government regarded the Basel Mission as a Government agent under the new arrangement: for the system of publication and sale of Government books by or on account of Government came to an end with G. O. No. 508 Edl. dated 30th August 1888. In para 6 of that order it was stated - "The actual publishing and selling trade must be entirely made over to private agency. The Director may give his imprimatur to editions issued by private firms and may allow them the use of Government copy-rights free of charge on tender and subject to such conditions as he may deem fit to impose as to type, size, papera prices and as to the submission of proofs to the special branch of his office. It will then be known exactly what the outlay on the control of the supply of school-books is and commercial dealings will be got rid of altogether". If, too, the Mission was intended to be an agent under the new arrangement in exactly the same way as under the old, there was no point in

terminating

Hag B.

terminating the old arrangement and in ~~improving~~ imposing new conditions.

9. To sum up, the position appears to be this:-

If the contention of the Society is admitted, ~~the course~~ one of the alternatives proposed in para 6 of the memorial ~~would~~ will have to be adopted. It may be noted, however, that in the list given in para 3 of the memorial, some books of the editions of 1884 and 1888 are included which came under the first arrangement of 1884. They are not mentioned in para 6 of Mr. Grigg's letter on page 6 of G. O. No. 169 Edl. dated 27th March 1889 and may be the balance of editions purchased by the Society under the old arrangement which terminated in 1889, and if so, Government is not concerned with them as they belong to the Society. The sum to be refunded to the Society ~~would~~ will then be Rs 7,025-7-9 - (62-12-0 + 35-6-0) less 20 per cent or Rs 5,549-14-3, and the books ~~would~~ will remain the property of Government. If, however, the Society is regarded as a purchaser, Rs 5,549-14-3 less the

(according to the figures given in the memorial)

Hag D

cost

cost of printing will have to be refunded

and the books ~~remain~~ left to the Society

Under the Cost of the conditions of 1889 the Society

is bound to abide by the decision of Go-

vernment, but it may be considered advisable

to take the opinion of the Government

Solicitor before finally deciding the case.

In either case it seems necessary to obtain from the D.P.I the exact amount of the payments made to Govt. at present these are only the figures given in the memorial to go upon.

(the D.P.I. subject to appeal to)

ahe
3/8/99.

This is a good instance of the folly of amateur-contracts. It is difficult to understand the Contract of 1889 - but as I understand it, it means that Gorst was ready to forgo all the profit it had hitherto made on the sale of books having Gorst copy rights - what Mr. Grigg apparently intended was that he was to fix the charges & selling price & the Mission were to remit them the difference between the charges & the price, as books were sold - However Mr. Grigg asked the Mission to purchase all the Gorst Books then on hand, which took as if he intended the Mission to become from that date the owners of all the books printed & sold by them - In any case the Mission apparently thus understood the Contract & continued to remit to the Treasury the value of the whole of the editions they printed minus the printing & binding charges - say 20 p.c. which they kept as profit as they sold the books. It seems desirable to take the Govt Solicitors opinion on the legal position first & then decide on terms -

I find it difficult to understand the case

AH

7 Aug 99

yes
AH 7.8.99

7 viii 99.

Secy

AH

As ordered by Govt. the opinion of the Govt Solicitor on this case has been obtained and is herewith submitted - vide Cus 13163.

The Statement of books on hand on the 31st March 1899 promised in para 4 of the memorial has also been received & is putup. - vide Cus 1273.

It will be seen that the Govt Solicitor is clearly of opinion that the Mission has no legal claim on Govt. This might, it is submitted, be pointed out to the Mission. at the same time as it appears probable that the loss complained of by the Mission is due, to some extent at any rate, to the change of policy of the Educl Dept in giving managers of schools freedom in the choice of text-books, the D.P.I may be asked whether he cannot suggest any means of assisting the Mission to get rid of the books. In the last para. of his letter the D.P.I. says that such of the books as are reported by the Supt. not to find a good sale may be brought to the special notice of inspecting officers so that they may be more largely used in schools under public management

He suggests that in Govt Schools the books can be used but he cannot interfere with Mission Schools.

AH.

will probably not help very much but not satisfy the mission. What it wants, failing the purchase by Govt of all the copies, is that the compulsory use of the books should be notified in schools till the copies are all sold. Govt has recently decided to reserve to itself the power of prescribing any book or books for use in schools, & the D.P.I has recently submitted a revised notification to this effect. Under the revised rule therefore the books can be compulsorily prescribed Orders are requested.

This will never do. The power is proposed to be taken for an entirely different purpose.
HA.

ale 14/9/99. The Director might be asked to do this or asked if he can do it. In any case it would seem advisable to tell the Mission at once that the Govt cannot recognise them as any thing else than purchasers but that the D.P.I. will be asked to afford them as far as is possible to Manage Sale for the books.

Yes.
HA
13.9.99.

[L. & M.]
250—19-12-98.

Educational
~~LOCAL AND MUNICIPAL~~ DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., No..	dated		189 .
Again G.O , No.	dated		189 .
Current No. 672	of 1899, dated 15th	March	, from the Superintendent Basel mission Book & Tract depository
" " 1053	" 1899, " 11th	July	, " the D.P.I
" " 1273	" 1899, " 17th	August	, " " " "
" " 1363	" 1899, " 29th	"	, " " Govt Solicitor

ORDER. this 617 dated 14/9/99.

The Superintendent of the Basel mission Book and Tract depository, Mangalore, will be informed that the Govt cannot recognize ~~the Mission as~~ ~~any thing else than purchasers of these books.~~ The Govt will however request the D.P.I to assist the Mission as far as is possible to obtain a sale for the books.

Considers that the Mission was to the agents of Government for the sale of the books refused to, but their purchasers.

/from orders/
14. IX 99

Pdf ale 14/9/99.
14/9/99
Note. Should any thing be said about the D.P.I receiving without question the payments made by the mission under a mistake? Please see page 11 of the note.
Pdf This appears to be unnecessary now.
ale.
Yes as necessary
IX 99
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To
The Superintendent Basel mission Book & Tract depository Mangalore
a D.P.I

for copying 1/12

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