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Government of Madras.

Judicial DEPARTMENT.

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
23rd July 1863.*

Read the following papers:—

No. 218. From the Reverend J. RUTHVEN MACFARLANE, M. A., Senior Chaplain of the Church of Scotland; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Ecclesiastical Department, Fort Saint George, dated Cannanore, 21st February 1863, No. 1³⁶.

I have the honor to request that you be good enough to submit, for favorable consideration, to the Honorable the Governor in Council and for transmission to the Government of India, the following observations on a Bill recently introduced into the Legislative Council, entitled, "A Bill to provide further for the solemnization of marriages in India of persons professing the Christian religion;" the tendency of which in certain parts is, however, unintentional not merely to perpetuate, but to aggravate grievances and disabilities as regards the Church of Scotland in India, which I venture to observe, with all respect, are not merely unnecessary, but are also offensive to every member of that Church as well as a restraint on the consciences and a restriction of the spiritual liberty of a large section of Christians who are not within her pale.

2. In Sections I and II, it is directly asserted, and in others it is implied, that all marriages by Clergyman of the Church of Scotland must be "between persons one or both of whom are members of or hold communion with the Church of Scotland," while as regards the sister establishment, no such restriction or disability exists, the Clergyman not necessarily being of the same denomination as either of the parties.

3. It may no doubt be asserted that this is but the re-affirmation of previous enactments, it may, however, be observed without entering into the higher legal argument, that the establishment by Law of the Church of Scotland in India in 1813, was viewed with something like alarm and if it may be said without offence with jealousy by the Church of England, such as would not be manifested nor felt in the present day when more liberal views prevail and the relative claims and positions of the two establishments are more clearly understood, India was then conceived to the peculiar domain of the Church of England, and it was held by many that members of the Church of Scotland in India must therefore be regarded as Dissenters as in England, or as the members of the Church of England are in Scotland, and consequently subject to certain disabilities as such. Doubts therefore arose in this point which it was deemed expedient to set at rest by a Declaratory Act of Parliament, 58 George III, C. 84, the very title of which even then declared by its terms as much against as in favor of any exclusive claims; "*An Act to remove doubts as to the validity of certain marriages,*" &c.

4. Opinion and practice however have greatly changed in this respect as well as in others during the present century under a clearer appreciation of the real relations of Her Majesty's Colonial Possessions to the mother country. Ecclesiastically they are regarded as neutral ground on which the two branches of Ecclesiastical establishments of the United Kingdom meet on equal terms and enjoy the same freedom as in England and Scotland respectively. No such restriction as that referred to is imposed on the Scottish Clergy in Scotland, and I trust it will not be deemed unreasonable that the members of our Church should feel its existence in this country a reproach and earnestly desire its removal.

5. But this disability not only wounds the sensibilities of Scotch Churchmen, but proves also a grievance to many beyond her pale. A large number of Dissenters from both the English and Scottish Church as a point of conscience prefer the marriage service of the Church of Scotland, to that either of the Church of England or of the Marriage Registrar, and it occasionally happens that parties both of whom may be members of the Church of England may from relationship or feelings of friendship desire the services of a Chaplain of the Church of Scotland, the result in all such cases is that an unnecessary and invidious restriction of choice is enforced amounting to a prohibition or a strain is placed on the conscience which a wise Legislature would be slow to impose where the temptation is so great and evasion at the expense of conscience is so easy. Such evasion is I have reason to know far from unfrequent. All that the enactment requires and all that the Clergyman can demand is a written declaration of membership or of communion with the Church, the *bona fides* of which may be open to more than

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suspicion though not capable of disproof even were this requisite. A restriction on disability which produces such results unaccompanied by any compensatory advantage which is alike offensive to members of the Church of Scotland and inconvenient to many Christians of other denominations, it cannot be desirable to retain in the present Bill, and I earnestly trust that His Excellency in Council will see fit to recommend its removal.

6. But this Bill not merely confirms an antiquated disability, but actually introduces indirectly a fresh one of considerable gravity and practical inconvenience. It will not have escaped the observation of His Excellency the Governor in Council that by Section V of Part I, and VII and XXIV of Part II and other relative Sections, marriages by license in the Church of Scotland are ignored, and therefore by force of this Act would in future be rendered invalid. The right of marrying by license in the Church of Scotland has always been acknowledged and exercised in India though the practice has been somewhat varying. In one Presidency the rule has prevailed of obtaining license to dispense with Banns, from the Judges of the Supreme Court, in another until recent years from the Governor in Council. By the laws of the Church of Scotland the Presbytery or other Church Court has power on cause shown to grant license to dispense with the publication of Banns, and this latter course, as the most constitutional, has been the one adopted in the last case referred to, and is the one I humbly venture to suggest which should be introduced into the present Bill.

7. It is true that this license to dispense with the publication of Banns is seldom if ever resorted to in Scotland, as Banns are popular with all classes of the community. In this country however they are not only unpopular but are on many occasions actually impracticable. Our congregations are to a large extent Military, and in cases of short leave or of sudden order to march, there is no time for the publication of Banns or of the notice as contemplated in Part II. Emergent cases may also arise in other forms where this additional disability might be attended with grave inconvenience. Within my own experience a gentleman desired for special and commendable reasons to be married on his death-bed, and but for the privilege of dispensing with Banns which our Church has hitherto enjoyed, but of which she is now threatened needlessly, and I would venture to say unjustly to be deprived the fulfilment of that very honorable engagement in *articulo mortis*, would have been impossible, as the gentleman died on the following day.

8. I do most earnestly trust that this fresh disability which would prove most inconvenient to many members of our Church and most distasteful to all, and which I am willing to believe has slipped into the present Bill through inadvertence, may not be allowed to pass into Law, and I would therefore most earnestly solicit the support of His Excellency the Governor in Council to my request that we may not be deprived of a privilege which we have always enjoyed, which is in accordance with the Laws of the Church of Scotland, and which while invading the privileges of no one has always been cherished and appreciated, by the members of our Church in India.

9. In regard to the system of registration for the Church of Scotland, Part III, in the 29th and following Sections, innovations are proposed to be introduced, the object and the necessity of which I must confess myself unable to discover. The system established by the Governor in Council in this Presidency, (Sir Charles Trevelyan,) and adopted I believe in the other Presidencies, commends itself at once for its efficiency, simplicity and uniformity, and has been found to work with the most complete success. In conformity with the system now existing in the Church of England and which this Bill proposes to continue as regards that Church, the Returns of marriages are made up quarterly along with those of other sacred offices, not merely in the Presidency Towns but also in the Mofussil Stations, and transmitted through the Senior Chaplain to Government and the Registrar of the Diocese. This arrangement appears so simple and complete that the proposed innovation cannot, to say the least, be deemed an improvement.

10. It is proposed in the Sections referred to, that the Chaplains at the Presidency Towns shall make Returns of marriages celebrated *within a circle of twenty miles quarterly* to Govern-

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ment and the Registrar as at present, and that Returns of all marriages beyond that distance shall be sent *monthly* to the local Registrar.

11. The effect of this apparently eccentric territorial arrangement would be not merely a disruption *pro tanto* of that unity which has in no small degree tended to the efficiency of our Church but to render all Returns of sacred offices unnecessarily complicated and incomplete. This will be obvious to His Excellency when I remind him that Returns of Baptisms and Burials would still have to be made quarterly to Government by all the Chaplains of each Presidency or Governorship without reference to any imaginary territorial limits, while the Returns of marriages would in some cases be made to a local Registrar monthly, and in other cases to Government quarterly as at present. But this inconvenience and complication will be more obvious still when His Excellency observes that the Chaplains of Presidency Towns have authorized out-stations beyond this arbitrary line of twenty miles, as for example Arcot. In such cases the Presidency Chaplains would have to make two fragmentary Returns to two different parties, or through two different channels, the one *monthly* for an outer out-station to the local Registrar, the other *quarterly* to Government for inner out-stations and the centre and neither of which as regards those Chaplains would be a complete Return of the duty they had performed. All this is in such obvious and disadvantageous contrast to the simplicity and efficiency of the existing system that I trust I may rely on the recommendation of His Excellency that the proposed alterations be expunged and that the existing uniform system of registration be confirmed in this Bill.

12. It is the earnest desire of Her Majesty's Government, as expressed in a Despatch of the Secretary of State for India, to render the rather limited establishment of the Church of Scotland, as efficient as possible. I am confident that it is the desire of His Excellency to promote that efficiency, as I am sure it is neither the wish nor the object of the Government of India in Legislative Council to mar it.

13. With such convictions, I would earnestly solicit the favorable consideration of His Excellency the Governor in Council to the foregoing statement and his recommendation for the reasons above stated.

I. That the disability affirmed in the first and subsequent Sections be removed.

II. That the existing privilege of marriage by license either from the Supreme Court or the Ecclesiastical Courts of our Church be affirmed, and

III. That the proposed innovations on the present mode of registration as regards the Church of Scotland, be withdrawn from the Bill and the existing system as previously explained, be affirmed.

14. As the Bill will be speedily brought under discussion in the Legislative Council, I have the honor to request that you will do me the favor to submit this letter to the early consideration of the Honorable the Governor in Council.

No. 219. From the Right Reverend the Bishop of Madras; to His Excellency the Governor in Council, Fort Saint George, dated Adyar, 27th February 1863.

I beg to state to your Excellency in Council for the information of the Supreme Government, that upon receiving the Government Order, dated January 17th, No. 57, with copies of the Marriage Bill which has been introduced into the Council of the Governor General, I wrote to several Missionaries as well as to the Secretaries of the Church Societies, but have not yet received a sufficient number of replies to enable me to offer remarks on the Bill.

I think it my duty to make this statement, as it appeared in the Government Order that the Bill might possibly be brought on again early in March.

No. 220. From C. F. CHAMIER, Esq., Registrar of the High Court of Judicature at Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, dated 20th March 1863, No. 39.

1. I am directed to acknowledge receipt of the Order of Government, dated 17th January 1863, forwarding for the opinion of the High Court a Bill to provide for the solemnization of

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marriages in India of persons professing the Christian religion; and drawing the special attention of the Judges to the provisions affecting Native Christians.

2. In reply, I am directed to state that the Chief Justice and Judges have no observations to make upon the Bill generally. With respect to the provisions contained in Part IV of the Bill, they believe that these will be found sufficient for the cases of those Native Christians who might have some difficulty in following any of the other prescribed forms.

3. Part IV, however, merely provides for future marriages. The only Section of the Act relating to past marriages is Section VI, and the Chief Justice and Judges are of opinion that a provision similar to that in Section VI, applicable to past marriages of Native Converts to Christianity, might, with advantage, be expressly re-enacted in Part IV, in language adapted to the case of these persons.

No. 221. From the Right Reverend the Bishop of Madras; to His Excellency the Governor in Council, Fort Saint George, dated the Adyar, Madras, 26th March 1863.

1. I have the honor to submit to your Excellency in Council, the following remarks on the Marriage Bill, of which your Excellency forwarded me a copy together with the Government Order of the 17th January, No. 57.

2. In Part I, the 4th Clause appears to me to propose a very stern enactment. In Scotland a marriage performed in a private room by a Minister of the Church of Scotland is, I am informed, perfectly legal and valid. This clause does not pronounce such a marriage to be informal merely, and assign a proper penalty for informality to be levied on the offender, viz., the Minister; but consigns the married parties themselves, who may have complied with all the essentials of valid marriage, and their children after them, to the dishonorable and dreadful results of an illegal and void marriage.

3. In Part II, Clause XV, may prove sometimes a very hard Regulation. A Native Christian girl of fifteen, whose hand is sought in marriage by a Native Christian man, will have to wait six years before she can be married, because her *heathen* father refuses to allow the marriage. Should not legislation take cognizance of the different ages at which Europeans and Orientals attain to maturity, and assign a shorter period for the state of minority in the case of the latter than in that of the former? In Clause XLIII, this principle is recognized.

4. A fear has been expressed to me respecting Clause XXXIX in Part III, lest Native Christians should be placed at a disadvantage by having to pay marriage fees to Government, while Mahomedans and others are exempt.

5. With regard to Part IV, I would observe, that in Clause XLII, room is left for authorizing a *heathen* to grant Certificates of marriage between Native Christians. It seems to be important, and is certainly most fitting, that only a Christian be capable of holding a license for such a purpose. The insertion of the word "Christian" between "any" and "person," in line 6, would be sufficient to express this desideratum.

6. In the letters which I have received from several Missionaries, whose opinions I had asked upon the contents of the Bill, difficulties are mentioned and views expressed, which I am disposed to think would not affect the provisions of the Bill, and which are therefore not noticed in this letter. But as they are more or less nearly connected with the subject of the Bill, and I may be mistaken in considering them as not likely to affect the wording of the Bill, I venture to append them to my letter.

(Signed) F. MADRAS.

APPENDIX.

1. Many of the Missionaries are anxious about a certain class of Natives who have given up heathenism but have not been baptized. In Tinnevely alone this class numbers more than eighteen thousand. They are sometimes called "Unbaptized Christians," sometimes "Inquirers," and seem to correspond to the ancient order of "Catechumens." This order [See Bingham's *Antiqq. of the Christian Church*, B. I., Chapter 3, and B. X., Chapter 1; also Mosheim, Part II,

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Chapter II, Section 7 and Chapter III Sections 5, 6], was after the earliest ages of the Christian Church reckoned as an order of Christians. Probably our own laws would not so recognize the "Inquirers" of our Missions. But the question is an important one; and its importance is growing with the growth of our Missions in India.

It is held by some persons of intelligence and experience, that every discouragement should be thrown in the way of any one remaining long in what may be called a transition state from heathenism to Christianity, and that therefore no cognizance ought to be taken of such in legislating for the country.

Others, seeing the necessity of their existence and being desirous that marriages contracted by them should be performed without any of the accompaniments of heathen weddings, propose that the custom which has been usually followed of having the marriage ceremony performed by a Catechist with the use of some of the prayers of our own marriage service should be brought under the sanction of Law; and that for this purpose certain Catechists should be appointed by Government as Registrars.

I submit for consideration that provision be made (in this or some other Bill), if not already made, for legalizing the marriages of "Inquirers" when performed by Catechists, whether these Inquirers be reckoned as heathen or as Christians.

2. Clause XLIII has called forth important observations from some of the Missionaries. The Local Committee of Missionaries of the Propagation Society in Tinnevely, approve of the provision that no notice of marriage should be required

The following is an Extract from their Minute. "It appears probable that some additions may be proposed to be made to Part IV with a view of preventing clandestine marriages and the marriage of minors without the consent of their parents and guardians."

"It is hoped that no such additions will be inserted, seeing that they are totally unnecessary, and if they were inserted would require the introduction of a complicated system of notices and forms, which would involve much expense and trouble. When both parties are Natives, the usages by which Native marriages are regulated are invariably adhered to; and where those usages are observed, clandestine marriages are impossible." It is doubtful whether any case of a clandestine marriage, that is, of a marriage entered into without the knowledge or consent of parents and guardians, has ever been heard of amongst Natives. The evil is peculiarly an European one; and in surrounding marriages in which one of the parties is an European with restrictions, for the purpose of preventing this and similar abuses, care should be taken to avoid irritating Natives with rules which they do not require."

"The only rules that are really required for Native marriages are those which prohibit the marriage (1) of persons of immature age and, (2) of persons one of whom has a husband or wife still living."

3. The sentence numbered 2 in Clause XLIII, relating to prohibited degrees has occasioned expressions on the part of some of the Missionaries of their opinion, that a Native Christian should not be prohibited from marrying his deceased wife's sister. But surrounded as this question is with very great difficulties, I am not prepared to endorse their opinion.

4. Sentence No. 3 has also given rise to several observations. Cases are continually coming before the Missionaries in which it is very difficult to decide whether a given person is or is not to be accounted as "having a wife or husband still living."

5. The remarks of the Conference of the Missionaries of the Church Missionary Society to the Telugus on this subject are as follows:—

"Provided sufficient care be taken as to the character of the persons, whom the Government may license to grant the Certificate of marriage, the Conference sees no objection to the relief, which the Bill proposes, being granted, (should it be necessary,) to those who may live at a considerable distance from a Clergyman in holy orders or a Marriage Registrar."

"The Conference, however, do not clearly understand how much is implied by condition 3 in Section XLIII (page 6)."

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"Neither of the parties intending to be married shall have a wife or husband still living."
"When either of two parties married according to Hindu custom in early childhood, but who have never cohabited, becomes a Christian, is the other party remaining in heathenism and refusing to live with the Christian, to be considered till death as a "wife or husband still living?"

"If the party be so considered."

"Supposing it is the girl, who becomes a Christian, is not the boy as much at liberty as before to marry again under the Hindu Law, while the Christian girl, by the supposition, has not that liberty? Could she be divorced from him on the ground that his re-marriage was towards her adultery? For, the husband in the case supposed, is not a Christian, and according to Hindu Law, not an adulterer."

"Supposing the boy is the convert to Christianity, is he never to be considered free to re-marry unless he can prove adultery against the girl? The interpretation to be put upon the words "a wife or husband still living" would seem also to affect the following cases involving Native Christians and Converts, cases which are actually pressing upon us at this time.

1. "A heathen man quarrels with his wife, casts her off, and marries another woman. The cast off wife afterwards becomes a Christian and desires to marry."

"2. A heathen parent gives away his daughter, an infant, in marriage to a man, living with another wife, by whom he has had several children. Bye and bye, the parent embraces Christianity, has his infant daughter baptized and desires to deliver her from the bondage in which he has placed her, and to marry her, when of age, to a Christian."

"3. A woman lawfully married, of mature age, and who has lived with her husband, desires to embrace Christianity; her husband objects to the step, and refuses, so long as she persists in her intention, to have her as his wife. He takes another wife; can the first wife marry again?"

4. "A heathen girl A, an infant, is married to a heathen man B; A's parents afterwards embrace Christianity and have her baptized with their household. B then takes a second wife, contrary to the remonstrances of A's parents and lives with her. A's parents desire to set their child free."

5. "The heathen wife of a heathen husband for frequently deserting her husband is divorced from him by the headman of her caste. Five years afterwards the husband becomes a convert to Christianity. Is he at liberty to re-marry in the lifetime of the divorced wife?"

6. "If a husband or wife desert his or her partner, and be not heard of for seven years (see Penal Code, Ch. XX, Section 494) is the deserting party still to be considered "a wife or husband still living," and the other one not to be at liberty to re-marry? or what steps ought he or she to take to obtain liberty to re-marry?"

"As the object of Part IV of the Bill is (page 12) "to meet the cases of Native Christians" and "to clear up the doubts that now exist as to their marriages," the Conference would respectfully pray for some speedy relief to meet the cases above stated."

I am informed that such difficult cases as these have frequently to be decided by the Missionaries, with the help sometimes of respectable and trustworthy members of their congregations.

No. 222. From T. SYDNEY SMYTH, Esq., Advocate General; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, dated High Court House, Madras, 5th May 1863.

I much regret the delay that has occurred in transmitting my observations on the "Bill relating to marriages in India," but at the time they were called for I was, and for several weeks had been, confined to my room by severe illness, and the papers were consequently mislaid, and it was only about a fortnight ago that I recovered them. I the more regret this delay because I have very few observations to offer.

2. The Bill appears to me to be a very valuable Statute, of great practical utility, as putting an end both to very serious and distressing doubts, most dangerous to domestic happiness

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and the peace of families, as also to much fraud connected with the solemnization of marriages, the very foundation of civilized society. In all these respects the provisions of the Bill seem to me well adapted to carry out the views so well expressed by the late lamented Advocate General of Bengal, in his statement of Objects and Reasons.

3. As regards Part IV of the Bill, added since Mr. Ritchie's death, and relating to the "marriage of certain Native Christians," I was anxious to have discussed it with some Clergymen who have Native congregations, and with the Secretaries of some of the Missionary Societies, but I regret that the uncertain state of my health, and frequently recurring attacks, have unavoidably delayed my doing so—and after your Memorandum of this day's date, I am unwilling to cause any further delay.

4. It only occurs to me to suggest, with reference to Section XLIII, Clause 1, whether the ages there mentioned, viz., sixteen for males, and thirteen for females, might not be advantageously altered to eighteen for males and fourteen for females. I say eighteen years for males, as the Regulations have long since adopted that age as the period of majority, though sixteen is the period according to Hindoo Law; eighteen therefore would not be a novelty, and entering upon the duties of married life, and paternity, can certainly not be said to be a less important matter than the assuming charge of property; while as regards the future health and stamina of both the parties themselves and their offspring, the advantages of postponing sexual intercourse at so immature an age must be sufficiently obvious. My reason for adding only one year in the case of females, while I suggest adding two in the case of males, is the much greater precocity of Native females, and the far greater unhappiness that would result from irregularities in their case than in that of males.

5. If, however, the above suggestion should not be approved of, I would submit for consideration, whether, in case the parents of a young couple intending to marry should be resident at the same place, it might not be well to require their consent, or at least that of the respective fathers, between the ages of 16 and 18 for males, and of 13 and 14 for females.

No. 223. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 23rd July 1863, No. 1,188.

I am directed to acknowledge the receipt of your letter of the 24th December last, No. 7,366, forwarding for the opinion of this Government, a copy of a Bill introduced into the Council of the Governor General to provide further for the solemnization of marriages in India of persons professing the Christian religion.

2. The Bill in question was referred to the Honorable the Judges of the High Court, to the Right Reverend the Lord Bishop, to the Senior Chaplain of the Church of Scotland, and to the Advocate General; and I am now directed to transmit for the consideration of the Honorable the President in Council the annexed copies of letters from these functionaries, stating their views on such of the provisions of the Bill as have appeared to them to call for remark.

3. The Judges of the High Court approve generally of the Bill, but suggest that a proviso with reference to past marriages should be added to Part IV similar to that contained in Section VI, Part I; and in this suggestion the Governor in Council concurs.

4. The Bishop objects to the stringency of Section IV which renders any marriage solemnized by a Minister of the Church of Scotland at any other place than a Church, &c., unless the same be solemnized in the presence of a Marriage Registrar, null and void. His Lordship also objects to Section XV as being unsuited to Native Christians; and would prescribe a shorter period for the state of minority in this case than in the case of persons of European extraction. He would also provide that the persons licensed to grant Certificates of marriage between Native Christians shall be Christians. The Governor in Council concurs with the Bishop on the several points above adverted to.

5. In an Appendix to his letter, the Bishop has given the substance of certain representations which have been made to him on matters which he considers do not affect the provisions of the Bill, but which are more or less connected with it. One is the question of legalizing the

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marriages of persons in a transition state from Heathenism to Christianity when performed by Catechists, and another is the construction to be put on condition 3 in Section XLIII:

"Neither of the parties intending to be married shall have a wife or husband still living."

The Governor in Council is not prepared to recommend any alteration of the Bill to meet either of the questions here raised, and which he is of opinion should form the subject of a separate enactment, if, on full consideration, legislation on the subject should be deemed necessary.

6. The Senior Chaplain of the Church of Scotland has discussed the Bill at some length, as it affects the position of that Church. He urges—

(a). That the disability which is affirmed by Sections I and II of Clergymen of the Church of Scotland to solemnize marriages between persons not members of that Church, may be removed.

(b). That the privilege which at present is possessed by Clergymen of the Church of Scotland of solemnizing marriages by license obtained either from the High Court or the Ecclesiastical Courts of the Church of Scotland, be continued.

(c). That the rules at present in force in regard to the registration of marriages solemnized by Clergymen of the Church of Scotland, be retained.

7. The Governor in Council considers that the objections regarding the Reverend Mr. Macfarlane to the Bill as it now stands, are entitled to consideration. It may fairly be said that as regards the Church of England and the Church of Scotland, India is neutral ground, and there is no apparent reason why the Ministers of the two Churches should not be invested with the same privileges in regard to the performance of marriages; nor does he see any reason why the existing privilege of marriage by license and the existing rules regarding the registration of marriages performed by Clergymen of the Church of Scotland, should not be retained.

8. The only point noticed by the Advocate General is the age which the Bill (in Section XLIII) prescribes as the minimum in the case of Native Christians, and which Mr. Smyth would raise from 16 to 18 in the case of males, and from 13 to 14 in the case of females.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

Dear Sir William
Will you forgive me
for thus calling your earnest
and early attention to the proposed
Marriage Act as it affects our
Church in which I have
expressed my dissatisfaction
with the present law
and the proposed Bill
which I have submitted to the Governor
and the Council and which
we believe to be a necessary
and a just measure
I am
Yours truly
Wm. Smith

think they are wholly unintentional
I have reason to believe shall come
that the great rise of our Church
of late years both in extent and
influence has excited the alarm
and jealousy of not a few. The
tendency of this Bill as it affects
us is obvious to such that
proper kind influence and to
disintegrate if I may so speak or
disincorporate us as a branch of one
of the Established Churches of the
United Kingdom. With this I think
I may safely assume that you will
have no sympathy. With yours
enlightened

Ed. T. McMootry.

6
enlightened and liberal views and
large colonial experience they are
prepared of opinion in the face
of your Government withstanding
their great weight and if in accord
ance with our wishes will be in-
strumental in removing from
these offensive restrictions the de-
moral of which ought to be removed
as one which is well regarded as
a born by a large section of the
Christian Community in India.
Should the Legislature remove
such as retaining these objection-
able sections and their protect-
tion, I think our Church will be
there

This country has in Scotland will be
 justified in saying the Secretary of
 State for India to hold assent
 to the Bill.

Ch
 I trust I have not been guilty of
 any irregularity in writing to you
 of the importance of the subject
 to our Church will be accepted as my
 apology.

Ch
 I hope to have my Greek con-
 sulted in about three weeks for I am
 heartily tired of what I shall be in
 I send you about the Board of Missions
 I have the honor to be with great
 regard Dear Sir William
 Yours very sincerely
 Sir William Denham
 Matthew Macfarlane

The general principle upon which the Gov^{rs}
 act in the Colonies generally is to place
 all churches whether "established" or not
 on a complete equality.
 I do not see however that the Church of
 Scotland many church, could claim as
 a right, the power of celebrating marriages
 between persons not belonging to their
 communion. I have not however got the
 full inquiries or cannot offer any
 opinion on the matter
 as regards no 2 I am with Mr Macfarlane
 also as regards no 7.

MP

desd 24

Judicial Department

N^o 1188.

The Secretary to the Government of India.

Home Department

Dated June 1863.

Sir,

I am directed to acknowledge the receipt of your letter of the 24th December last, No 7366, forwarding for the opinion of this Government a copy of a Bill introduced into the Council of the Governor General, to provide further for the solemnization of marriages in India of persons professing the Christian religion.

2. The Bill in question was referred to the Honorable the Judges of the High Court, to the Right Reverend the Lord Bishop, to the Senior Chaplain

Wm. A. Allen

as above at 8.15.1863
The J.P.

Chaplain of the Church of Scotland, and to the Advocate General; and I am now directed to transmit for the consideration of the Honorable the President in Council the annexed copies of letters from these functionaries, stating their views on some of the provisions of the Bill as have appeared to them to call for remark.

3. The Judges of the High Court approve generally of the Bill, but suggest that a proviso with reference to past marriages should be added to Part IV similar to that contained in Section VI Part I; and in this suggestion the Governor in Council concurs.

The

* and would prescribe a shorter period for the state of marriage in cases of absence of husband or wife.

I am not sure of the intention of the Government in regard to the marriage of persons who have been divorced in England. I have seen a report that the Government intend to allow such persons to marry again in India. I have also seen a report that the Government intend to allow such persons to marry again in India. I have also seen a report that the Government intend to allow such persons to marry again in India.

4. The Bishop objects to the stringency of Section IV which renders any marriage solemnized by a Minister of the Church of Scotland at any other place than a church &c, unless the same be solemnized in the presence of a Marriage Registrar, null and void. His Lordship also objects to Section XV as being unsuited to Native Christians, but neither this section nor indeed any part of the Bill, except Part IV, appears to be intended to apply to Native Christians. He would also provide - and in this suggestion the Madras Government concurs - that the persons licensed to grant certificates of marriage between

between Native Christians
shall be Christians.

5. In an Appendix to his
letter, the Bishop has given
the substance of certain repre-
sentations which have been
made to him on matters
which he considers do not
affect the provisions of
the Bill, but which are
more or less connected with
it. One is the question of
legalizing the marriages
of persons in a transition
state from Heathenism to
Christianity when performed
by catechists, and another
is the construction to be
put on Condition 3 in
Section XLIII.

Neither of the parties
intending to be married
shall have a wife or husband
still living.

The

The Governor in Council is
not prepared to recommend
any alteration of the Bill
to meet either of the questions
here raised, and which he
is of opinion should form
the subject of a separate
enactment, if, on full
consideration, legislation
on the subject should be
deemed necessary.

6. The Senior Chaplain of
the Church of Scotland has
discussed the Bill at some
length as it affects the
position of that Church.

He urges,

(a) that the disability which
is affirmed ~~expressly~~ by
Sections I & II of Clergymen
of the Church of Scotland
to solemnize marriages
between persons not members
of that Church, may be
removed.

(b)

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in the Case of Clergymen of
the Church of Scotland,
to persons one or both of
whom are Members of
that Church.

9. The only point noticed by the Advocate General is the age which the Bill (in Section XLIII) prescribes as the minimum in the case of Native Christians, and

9. The only point noticed by the Advocate General is the age which the Bill (in Section XLIII) prescribes as the minimum in the case of Native Christians, and

And which Mr Smyth
would raise from 16 to 18
in the case of males and
from 13 to 14 in the case
of females. The Governor
in Council entirely con-
curs in the Advocate
General's observations
on this point. —

W/H

Fort St George
23^d July 1863

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To the Secy to the Govt
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