

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.

CHINNASAMI MUDALI AND OTHERS, PLAINTIFF, No. 2
AND HIS REPRESENTATIVES, APPELLANTS,

v.

ADVOCATE-GENERAL OF MADRAS AND OTHERS (DEFENDANTS),
RESPONDENTS. *

*Religious endowment—Powers of a Christian congregation to elect under which Bishop-
rick the endowment should be placed in spiritual matters—Effect of a concordat
placing the endowment within the territorial jurisdiction of a certain Bishop—Suit
for partition of the endowment.*

In the year 1806, a fund was started by a caste of Roman Catholic boatmen in Royapuram for the purpose of supplying the religious wants of the caste, and in 1829 the Church of St. Peter at Royapuram was erected. The fund was under the control of the Government Marine Board which, in 1830, in consequence of disputes between the headmen of the caste, suspended all payments. In 1863, a member of the caste, claiming to be sole surviving headman, brought a suit against Government for a declaration that he was sole surviving headman and as such entitled to the sole management of the funds then in the hands of Government, which funds the Government paid into Court to the credit of the said suit. By the decree in this suit it was declared that the fund, in question, belonged to the whole body of Roman Catholic boatmen in Royapuram, that it must be devoted to the religious observances of the body, and that it rested with that body to determine whether in spiritual matters the Church should continue under the Vicar Apostolic or the Goanese Bishop of Mylapore.

In 1886 a concordat was executed between the Pope of Rome and the King of Portugal, the effect of which was to place St. Peter's Church within the territorial jurisdiction of the Vicar Apostolic. Plaintiffs, who were members of the Goanese party, complained that, having regard to the effect of the concordat of 1886, it would be impossible for their party—even if in a majority—to elect a priest of their own party, and prayed for a division of the fund :

Held, that even if this were so, this fact would not justify the Court in taking away from St. Peter's Church part of its endowment.

APPEAL from the decree of Shephard, J., sitting on the original side of the High Court in suit No. 124 of 1889.

The facts of the case appear sufficiently for the purpose of this report from the foregoing, and from the judgment of the High Court.

* Appeal No. 11 of 1892.

Mr. Kernan and Mr. Grant for appellants.

The *Advocate-General* (*Hon. Mr. Spring-Branson*) for respondents Nos. 1 and 3.

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JUDGMENT.—We agree with the learned Judge that the plaintiffs have not been able to show that the position of themselves or their party has, in a canonical point of view, been materially affected by the concordat of 1886. The plaintiffs, no doubt, belong to the caste of Christian boatmen, for whose religious benefit the fund was originally intended. But by the decree in original suit No. 105 of 1863, it was decided that it was for the majority of the caste to determine whether in spiritual matters, the Church of St. Peter at Royapuram should be placed under the Vicar Apostolic or under the Goanese Bishop of Mylapore. Although the result of the first caste meeting held in pursuance of that decree was to place the Church under the Bishop of Mylapore, the order of 30th January 1867 recognized the election of the Rev. T. Gnanaprakasa Nadar as the successor of the Rev. Vincent de Silva. The Rev. T. Gnanaprakasa Nadar was subordinate to the Vicar Apostolic, and ever since 1867 the Church of St. Peter has remained under the spiritual jurisdiction of the Bishop of Madras.

The concordat of 1886 and the decree of 1887 have not, therefore, affected the position of the plaintiffs with regard to the sacraments called ‘paracholia.’ If plaintiffs are unable now to obtain these sacraments in St. Peter’s Church, they have been under the same disability since 1867, and the concordat between the Pope and the King of Portugal has not altered their position in respect to these sacraments.

All that can be alleged by plaintiffs as a grievance against the concordat is that at any future election of a priest by the members of the boatmen caste, it may be practically impossible for the adherents of the Goanese party—even if in a majority—to elect a priest of their own party, since by the concordat, St. Peter’s Church has been definitely placed within the territorial jurisdiction of the Vicar Apostolic. We are by no means clear that this result would necessarily follow. Seeing that the differences settled by the concordat related only to questions of patronage and jurisdiction, and did not touch the validity of the orders of either party or the faith of the Church, it may be that a Goanese priest, if elected, would be granted the necessary faculties by the Supreme Pontiff or the Vicar Apostolic. It appears from the evidence of Father

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Mayer, the Vicar-General under the Archbishop of Madras, that such canonical faculties can be given, though no doubt they very rarely are given. But even if supreme ecclesiastical authority has imposed upon the priests of the Goanese party a prohibition to accept this particular office, it appears to us that such prohibition is a matter of ecclesiastical jurisdiction with which the Courts have nothing to do. It could hardly be contended that it would not be open to the Supreme Pontiff to impose such a prohibition upon any individual priest in obedience to the See of Rome. And the possibility that the right of the caste to have one of the Goanese clergy as their officiating priest might be terminated by the permanent surrender of the church to the jurisdiction of the Vicar Apostolic was clearly contemplated by Scotland, C.J., and Bittleston, J., in civil suit No. 136 of 1866, and by Turner, C.J., in his judgment in civil suit No. 102 of 1880.

It is not, however, necessary for us to speculate upon a contingency which may never arise, for even if the practical effect of the concordat is to prevent the election of a Goanese priest, it is clear that that fact will not justify the Court in taking away from St. Peter's Church part of its endowment and bestowing that part upon the Church of St. Anthony. It was held in civil suit No. 105 of 1863, and re-affirmed in civil suit No. 102 of 1880, that the purpose of the fund was the erection of a church for the use of the caste of Christian boatmen at Royapuram, the performance of divine worship therein and other religious observances connected with the church, and to that purpose the whole property must be devoted. The question of the division of the fund so as to endow two churches for the use of the two parties has been previously considered; and it has been twice held that on principle and authority no such division can be made, and that the fund and the church cannot be separated.

Finally it was urged for the appellants that they were entitled to their costs out of the fund, since they had a *bonâ fide* grievance, and that the Advocate-General had accorded his sanction for the bringing of the suit. We have already shown that the concordat has not altered the existing position of the plaintiffs with regard to the rites of the church, which remain the same as it has been since 1867, while the possible future grievance, if it exist at all, is one with which the ecclesiastical authorities alone can deal. As regards the sanction of the Advocate-General, it is rightly pointed

out that it is no part of the duty of that officer to decide the case as a Judge, and that if an apparently good and *bonâ fide* grievance is shown, he may properly leave the applicants to bring the suit at their own risk. When, however, we find that an opportunity has been taken of a *friendly* settlement of differences between the highest authorities in Church and State to re-agitate in a *hostile* spirit questions long ago decided against the party of the appellants, we can see no reason why they should not be left to bear their own expenses. It would be an evil precedent if litigants were advised or encouraged to think that they could renew litigation with impunity, drawing the expenses of so doing from trust funds and not from their own pockets. We cannot but see how the very existence of such a fund as this may offer temptation to fomenters of litigation and encouragement for speculative actions. The last suit, which was decided by Sir Charles Turner on December 5th, 1883, cost the fund no less than Rs. 20,366. The present suit, which is framed to re-open the same questions, was filed within 5½ years of that decision, and here too we find that separate costs for third defendant, as well as those of the Advocate-General (first defendant), amounting in all to Rs. 4,775, have been allowed out of the fund. Apparently none of this has yet been recovered from the plaintiffs. It is lamentable to find that monies which have been devoted to the performance of divine worship and the religious instruction of the poor should be dissipated in fruitless litigation, and we cannot but express our regret that the Court was not moved to call for security for costs before the hearing of this appeal.

We dismiss the appeal with costs, but we do not feel ourselves justified in ordering that any further sum be paid out of the fund.

Branson & Branson—Attorneys for appellants.

Barclay, Morgan & Orr—Attorneys for respondents Nos. 1 and 3.
