

CHAPTER 430

EPISCOPAL CHURCHES

Ordinances AN ORDINANCE TO REGULATE THE TEMPORAL AFFAIRS OF THE EPISCOPAL
 Nos. 12 of 1846, CHURCHES IN THE ISLAND OF SRI LANKA WHICH HAVE BEEN ERECTED, OR
 3 of 1883, ARE NOW IN THE COURSE OF ERECTION, OR WHICH MAY HEREAFTER BE
 30 of 1890, ERECTED.
 3 of 1894,
 7 of 1916,
 17 of 1930,

Act
 No. 6 of 1972.

[26th November, 1846.]

Preamble. Whereas by the Ordinance No. 1 of 1845* it was enacted that whenever any sum of money not less than one hundred pounds should be raised by subscriptions drawn exclusively from the resources of private persons for the erection of any place of Christian worship in any part of this Island, or for the erection of any such place of worship together with a minister's dwelling, or for the erection or purchase of a minister's dwelling alone in respect of any existing place of worship, in the building or maintenance of which any public moneys had been expended, it should be lawful for the Governor, with the advice of the Executive Council, to cause to be issued from the Treasury, as a contribution from the public funds, such sum or sums of money as should be equal to the amount of such subscription; provided that no such sum should be issued from the Treasury until the whole amount required to be furnished by subscription should have been deposited therein, and a plan of the intended building submitted to the Governor and Executive Council and approved of by them: And whereas by the said Ordinance it was further enacted that, before any sums of money should be issued from the Treasury as aforesaid, trustees should be elected or appointed in such manner as should by some future Ordinances be provided: And whereas certain churches for the celebration of Divine service according to the rites of the United Church of England and Ireland have been erected or are now in course of erection by subscription and by contribution from the public funds as aforesaid, and it is

expedient to make provision for the management of the temporal affairs of the said churches, and of any others which may hereafter be erected in like manner for the purpose aforesaid:

1. This Ordinance may be cited as the Short title.
 Episcopal Churches Ordinance.

2. Within three months from the passing Notice of
 of this Ordinance, the colonial chaplain of election for
 any church already erected in manner church already
 aforesaid shall fix a place and a day, which erected
 shall not be earlier than twenty-one days from the passing of this Ordinance, for holding a general meeting for the election of trustees of the said church in manner hereinafter appointed, and shall cause notices thereof to be affixed to some conspicuous parts of the said church.

3. The building committee or persons in or in course of
 charge of the building of any church now in erection
 course of erection in manner aforesaid shall, within ten days from the passing of this Ordinance, fix a place and a day in the month of December next ensuing for holding a general meeting for the election of trustees of the said church in manner hereinafter appointed, and shall give notice thereof in three successive Gazettes.

4. The building committee or persons or to be
 who may be in charge of the building of any hereafter
 church to be hereafter erected in manner erected
 aforesaid shall, at the time of making application to the Governor for a contribution from the public funds, fix a

* Repealed by Ordinance No. 7 of 1868.

place and a day for holding a general meeting for the election of trustees of the said church in manner hereinafter appointed, and shall give notice thereof in three successive Gazettes.

seatholder, or of his election not being confirmed by the Governor, or in case any such trustee shall be a confirmed person of unsound mind, or shall be or become disqualified to act in such capacity, the remaining trustees of such church shall fix a place and a day for holding an election of a new trustee, and shall give notice thereof in the three Gazettes published next immediately preceding such day, and such election shall be held by the said trustees according to such and the same forms as are hereinbefore prescribed for the election of the original trustees.

Mode of holding election.

5. Any election to be held under the provisions of the three preceding sections shall be held before the person or persons by whom the day and place for holding the same shall have been fixed; and it shall be lawful for the subscribers to any church of which the sittings shall not have been apportioned, or for the seatholders, if the same shall have been apportioned, in respect of which such election shall be held, to elect three trustees of such church :

8. Every trustee to be elected or appointed under the provisions of this Ordinance shall be a member of the United Church of England and Ireland, and no person shall be elected or appointed or shall continue to be a trustee of any church after the apportionment of the sittings in the same unless he shall be one of the seatholders therein.

Qualificati of trustee.

Mode of voting.

Provided always that no subscriber or seatholder shall be entitled to give more than one vote, or to give any vote except in person, and that no person shall be entitled to vote who shall not be twenty-one years of age, and the person or persons holding any such election shall record the names of the voters and of the persons for whom their votes shall be given, and shall at the close of the election declare the names of the three persons for whom the greatest number of votes shall have been recorded, who shall thereupon be deemed to be duly elected as trustees, and shall grant to such persons certificates under their hands of such their election.

9. No trustee shall be permitted to resign his office until he shall have duly accounted, to the satisfaction of his co-trustees, for all sums of money at any time received by him in his said trust.

Trustee resigning to render account.

Appointment by Bishop of one trustee.

6. The trustees elected under the provisions of section 5 shall without delay communicate such their election to the Bishop of the diocese, who shall thereupon be entitled to appoint one other person to be a trustee of the church in respect of which such trustees shall have been elected, and shall grant to such person a certificate of such his appointment; and it shall be lawful for the Bishop from time to time, if he shall see fit so to do, to withdraw any such appointment, and to appoint some other person to be a trustee of such church, and to appoint a new trustee in the place of any trustee originally appointed by him who shall in any manner have vacated his office.

10. No trustee elected under any of the provisions of this Ordinance shall continue in office beyond the thirty-first day of December next ensuing after such his election; and the trustees for the time being of any church erected or to be erected in manner aforesaid shall fix a place and a day in the month of December in every year for the holding before them of a general meeting for the election of three new trustees of such church for the year commencing on the first of January next ensuing, and shall cause written notice thereof to be posted for fourteen days in some conspicuous place on or near the church; and such election shall be held according to such and the same forms as are hereinbefore prescribed for the election of the original trustees of such church:

Annual election of trustee-

Vacancy of trustee.

7. In case of the death, incapacity, resignation, or departure of any trustee of any church elected under the provisions of this Ordinance, or of his ceasing to be a

Provided always that nothing herein contained shall be construed to prevent any person who at the time of holding such election may be one of the trustees of any such church from being elected as such for the ensuing year.

Bishop to appoint in default of election of trustees.

11. If after the election and appointment of the original trustees of any such church the trustees for the time being shall, for the period of one month, neglect to fix a place and a day for holding an election of a trustee in the room of one who may in any manner have vacated his office, or whose election the Governor shall have refused to confirm, or if they shall for the like period neglect to fix a place and a day for holding an election of trustees for the ensuing year as hereinbefore appointed, it shall be lawful for any six of the subscribers to such church, or if the sittings shall have been apportioned, for any six of the seatholders, to fix such place and day, and to give notice of the same in manner hereinbefore appointed; and such election shall be held before the chaplain or clergyman of such church ; but if no such election shall be held within two months from the time appointed by this Ordinance, it shall be lawful for the Bishop of the diocese to appoint by writing under his hand, subject to approval of the Governor, one or more fit and proper person or persons to be trustee or trustees of such church to fill the vacancy or vacancies which shall have thus occurred, and every such trustee so appointed shall continue in office until the thirty-first day of December next ensuing.

Bishop may be sole trustee.

12. Nothing in this Ordinance contained shall be construed to prevent any person or persons who may hereafter, without any pecuniary or other contribution from the Government, erect any church for the celebration of Divine service according to the rites of the United Church of England and Ireland, from nominating the Bishop of the diocese for the time being and his successors to be the sole and successive trustees of such church, and in any such case the Bishop shall hold, exercise, and enjoy in respect to such church all the rights and privileges vested in trustees elected or appointed under this Ordinance.

Chaplain or clergyman chairman of trustees.

13. The colonial chaplain or clergyman for the time being duly appointed and licensed to any church erected in manner aforesaid, or during his absence the clergyman duly authorized to officiate for him, shall, whenever present at any meeting of the trustees of such church, be ex officio chairman of such meeting, but shall not

have the power of voting except in cases where the votes of the trustees present shall be equal; and when no such chaplain or clergyman is present the trustees shall elect their own chairman, and such trustees shall upon all matters before them have each one vote, and any three such trustees, or any two with the ex officio chairman, shall form a quorum, and any such quorum shall and may exercise all the powers and privileges which are vested in the trustees of any church by this Ordinance ; and in the event of a difference of opinion between such trustees on any occasion, the votes of the majority shall be binding upon all; and in case of an equality of votes, and in the absence of the chaplain or clergyman, the chairman for the time being shall, in addition to his own vote, possess a casting vote, and such trustees shall have power from time to time to make by-laws (such laws not being inconsistent with this Ordinance) for their general guidance, which laws shall be equally binding on and shall be observed by their successors until by them abrogated or altered :

Provided always that the meetings of the trustees shall take place on stated days agreed to by a majority for the transaction of ordinary business and that if the meeting be extraordinary or special seven days' notice thereof, and of its object, shall be given in writing to each of the said trustees and to the chaplain or clergyman, and that it shall at any time be competent for any two of the said trustees to convene such special meeting.

14. The real estate and property in any church of which trustees shall be elected and appointed in the manner aforesaid, and in any burial ground now belonging or which may at any time hereafter belong thereto, and their appurtenances respectively, and in all lands and hereditaments and in all moneys and chattels belonging or which may hereafter belong thereto, shall be deemed and taken to be vested in such trustees for the purposes of their trust.

Property vested In trustee

15. It shall be lawful for the said trustees to lease any portion or portions of the real estate and property vested in them as trustees, or any right or privilege a over or affecting any such estate or property, for the purposes of their trust,

Power to trustee to lease real property for a term not exceeding

ninety nine years.

provided that the following conditions be observed:—

- (a) every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for such term, not exceeding ninety-nine years, as the trustees shall think proper;
- (b) on every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained;
- (c) every such lease shall be by notarial instrument, and shall contain a condition for re-entry on non-payment of the rent for a period not less than twenty-eight days after it becomes due;
- (d) every such lease shall contain such covenants, conditions, and stipulations as the said trustees shall deem expedient with reference to the special circumstances of the demise.

17. The said trustees shall and they are hereby required as soon as may be after their election and appointment, or as soon as possible after the church shall be ready for the performance of Divine worship, to set out and apportion sittings in the church entrusted to them, and to affix and assess a rent or rate for such sittings and make agreements and contracts with any person desirous to engage the same according to such assessment:

Trustees to apportion sitting

Provided always that one-sixth part of the whole number of sittings in any such church shall be appropriated free of any charge whatever to the use and accommodation of the poorer classes of the population, and also not less than four sittings for the use and occupation free of all charge of the chaplain or clergyman; and such sittings shall for ever be kept apart for the purposes aforesaid.

18. Every subscriber to any church erected in manner aforesaid, provided he be bona fide resident within twenty miles of the same, shall be entitled to engage such number of sittings therein as he may really require for the use of himself and his family, and the priority of choice amongst such subscribers shall be determined by the trustees ; and after all the sittings shall have been so apportioned in the first instance the trustees shall register in a book to be by them kept for that purpose, all subsequent applications for sittings in the order in which they may be received by them, and shall allot such sittings as may thereafter become vacant to the parties who may have applied for the same according to such order.

Subscribers entitled to sittings.

19. It shall be lawful for the said trustees, and they are hereby required, to collect and gather or cause to be collected and gathered, all sums of money which shall be due for sittings in any such church, and all subscriptions and donations thereunto, and all rents and revenues that may at any time arise out of any land or hereditaments or from any property whatever belonging to such church, and all fees and payments for vaults and tombstones, and to apply for the said sums ; and it shall be lawful for the said trustees in conjunction with the chaplain or clergyman of such church, who in respect of such appointments or removals shall have a

Trustees to collect moneys,

and remove offices,

Trustees to make agreements, &c.,

and sue and be sued.

16. It shall be lawful for the said trustees to make or enter into, perform, and execute, and compel the performance and execution, of all such contracts and agreements, matters and things, and to commence and maintain all such suits and actions as they shall deem necessary to the performance of the trust reposed in them; and all such contracts and agreements shall and may be entered into and enforced and all such suits and actions be brought by them in the name of " The Trustees of the Church ", specifying the name of the church, but without specifying the Christian or surname of the trustees, and no action shall abate by reason of the death or removal or going out of office of any trustee; and all suits and actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, shall be brought by such person against the said trustees under the name and title aforesaid ; nor shall any of the said trustees, merely by reason of his being a plaintiff in any such suit, be prevented from being a witness therein.

vote, to appoint, suspend, and remove all church officers and servants employed in or about any such church (the clerk of the same excepted, who shall in each case be appointed and removed by the chaplain or clergyman only); and it shall be lawful for the said trustees generally to manage the temporalities of every such church, and to provide such articles as may be necessary for the proper celebration of Divine service therein, and to fix the salaries or other remuneration of all such officers and servants (including such clerk as aforesaid), and to pay the amount thereof respectively, and of all repairs of buildings and other expenses, which circumstances may from time to time render necessary, by or out of such rents and fees as aforesaid, or out of such other funds as may come to their hands.

and defray necessary expenses.

Trustees authorized to acquire property and maintain parsonages, schools, and missions out of income and collections.

20. It shall be lawful for the said trustees, after defraying such necessary expenses as are specified in section 19, to spend any income, rents, revenues, interest, fees, collections, or subscriptions, or any other funds which may come into their hands as trustees of any such church, in the purchase or acquirement of property of any description for the purposes of their trust, or in the payment of the stipends of the clergy, teachers, and catechists of such church, or in the erection or purchase of a parsonage for the use of the clergymen of such church, or for the maintenance of such parsonage and of schools or missions attached to such church, or on any other religious work connected with such church.

Erection of monuments, &c.

21. It shall and may be lawful for the said trustees, with the previous consent of the Bishop of the diocese, and with his approval of any proposed epitaph or inscription, to permit any monument to be erected or placed in such parts of any church erected or to be erected as aforesaid, or of the enclosed ground about the same, or of the burial ground belonging thereto, as they may deem convenient, or vaults to be dug and made in the said burial ground, upon payment to the said trustees, for the use of such church, for such permission, by the person or persons desiring to erect or place any monument therein or enclosed ground about the same, or in the said burial

ground, or to dig and make any vault in the said burial ground, on such charges as to the said trustees shall appear fitting:

Provided that the same shall in no case exceed the charges set forth in the Schedule A; and it shall be lawful for any person or persons erecting or placing any monument in any such church or enclosed ground about the same, or digging or making any vault in the said burial ground, by and with such permission as aforesaid, to have and maintain and keep up such monument or vault, according to the terms of such permission, to and for the sole and separate use of the said person or persons and his or their heirs for ever;

Provided always that it shall not be lawful to bury any body within any such church or within the enclosed ground about the same.

22. One person, not being a trustee", shall be elected at a general meeting to be called by the trustees in the first week in January in every year, to be an auditor of the yearly accounts of the said trustees.

Appointment of auditor.

23. The said trustees shall keep an account, wherein they shall enter all moneys received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditor may inspect at all reasonable times, and the said account, together with any report of the auditor thereon, shall be laid before the general annual meeting to be held under the provisions of section 10 of this Ordinance.

Trustees to keep account.

24. It shall be lawful for the said trustees to accept or take from persons willing to give the same, or from the State, subject to the provisions of any law now or hereafter to be in force relating to such gifts, any lands or premises adapted for the site of a chaplain's dwelling, with the garden and other appurtenances thereunto, or any lands or premises adapted for the purposes of a burial ground, or any lands or premises for the maintenance of such church or of the chaplain thereof and such lands or premises so given shall be deemed and taken to be for ever vested in the trustees of the said church for the time being in trust for the purposes thereof.

Trustees may accept lands.

Performance of service for troops.

25. It shall be lawful for the Governor, should circumstances render the same necessary, to require the free use of any church erected or to be erected in manner aforesaid for the performance of Divine service for the benefit of any troops stationed at or near to the same, at such hour during any Sunday as may be fixed by the said Governor after communication with the Bishop of the diocese:

Provided always that such extraordinary service shall not interfere with the ordinary services of the day.

at three consecutive annual meetings of the congregation have voted in favour of such application.

29. The churches exempted by section 27, and also such churches as shall hereafter be exempted under this Ordinance, and all property belonging or appertaining thereto, shall vest absolutely in the Incorporated Trustees of the Church of England in Ceylon, subject to the provisions of the Church of England Ordinance and any amending enactment thereof, and subject to any special trust affecting such property.

Churches exempted and hereafter to be exempted to vest in the Incorporated Trustees of the Church of England.

Trustees to nominate clergyman.

26. It shall be lawful for the said trustees, on the death, retirement, removal, or incapacity of the colonial chaplain or clergyman of any such church, to nominate a fit person to be clergyman thereof, subject to the consent of the Bishop of the diocese, and to such rules made by the synod of the diocese in regard to such nomination as may be lawfully binding on them.

30. No person shall be suffered to perform Divine service or to administer the sacraments, or to preach any sermon in any such church, except the Bishop of the diocese, the archdeacon, and the colonial chaplain duly appointed and licensed to such church, or some clergyman duly appointed by the ordinary.

Exclusive privileges chaplain.

Certain churches declared exempt.

27. The churches mentioned in Schedule B are and they are hereby declared exempt from the operation of this Ordinance and any amending enactment thereof.

31. Nothing in this Ordinance contained shall affect the right of the said trustees to sell any real estate and property vested in them as trustees in pursuance of and in accordance with, the terms and conditions contained in the instrument or deed of trust.

Trustees may sell if authorized thereto by trust deed.

Standing committee of the Diocesan Council empowered to exempt churches. [§ 8, 6 of 1972.]*

28. If at any time any of the aforementioned churches which have not been included in Schedule B desire to be exempted from the operation of this Ordinance, the trustees of any such church may apply to the standing committee of the Diocesan Council of the Diocese in which it is situated to be exempted from the operation of this Ordinance, and the said standing committee is hereby empowered to grant such exemption by the issue of a certificate signed by the Bishop of the

32. Any power or function vested in or assigned to the Governor by any of the preceding provisions of this Ordinance, and continuing to be exercisable by him immediately before the 4th day of February, 1948, shall, on and after that day, be exercisable by the Governor-General, and on and after the 22nd day of May, 1972, be exercisable by the President.

Powers, &c., of Governor to be exercisable by President.

[§ 8, 6 of 1972.]

Diocese in the form set out in Schedule C and on the issue of such certificate the said church shall be exempt from the operation of this Ordinance:

Provided always that no such application shall be entertained, unless the said standing committee shall be satisfied that two-thirds of the seatholders of the said church present

33. Nothing in this Ordinance contained shall or shall be deemed and taken to affect the Kandy Church Ordinance, or to extend the provisions of this Ordinance to such church, but the said Ordinance shall continue to be of full force and effect, and the affairs of the said church in Kandy shall continue to be regulated thereby.

Ordinance not to affect the Kandy Church Ordinance.

* The amendments effected by sections 8 and 9 of Act No. 6 of 1972 are deemed to have had effect only from and after 2nd February, 1950.

Cap. 430]

EPISCOPAL CHURCHES

[Section 21.]

SCHEDULE A

Erecting a tablet or monument in the church, not less than fifty rupees nor more than two hundred rupees.

Erecting a monument in the ground adjoining the church, not being the burial ground, any sum not less than thirty rupees nor more than one hundred rupees.

Burial in a brick or stone grave in the burial ground,, ten rupees.

Headstone or footstone (each), five rupees.

A stone covering over such grave, ten rupees.

A vault, for each person it is capable of containing, fifteen rupees, and on every occasion of its being opened, ten rupees.

A raised tomb over a vault, for each person it is capable of containing, fifteen rupees.

[Section 27.]

SCHEDULE B

CHURCHES EXEMPTED BY THIS ORDINANCE

All Saints' Church, Gallc; Christ Church, Matale; St. Clement's, Puttalam; Holy Trinity, PusseUawa.

[Section 28.]

SCHEDULE C

CERTIFICATE OF EXEMPTION

[§ 9,6 of 1972.] The Standing Committee of the Diocesan Council of the Diocese of Colombo/Kurunegala hereby exempts..... from the operation of the Episcopal Churches Ordinance.

Dated at Colombo/ Kurunegala this day of..... 19.....

Bishop of Colombo/Kurunegala.