

of licenses, admissions, or institutions of clerks to spiritual offices, benefices or cures, a distinction must be made according to the nature of the office, benefice, or cure.

“If there be no previous contract or trust, express or implied, between the Bishop and the patron, or the Bishop and the presenter, and if the office, benefice, or cure in question has not been founded, endowed, or established by any positive law or enactment, or by any other mode of legal foundation inconsistent with the exercise, in that respect, of a free and uncontrolled discretion by the Bishop, in these circumstances I am advised that it would be competent to the Bishop to make the license, admission, or institution, of a clerk to a spiritual office, benefice, or cure, conditional on his assent to such resolutions.

“But if the Bishop be bound, with respect to such benefice or cure, by any antecedent contract or trust (like the engagement to appoint the nominee of Mr. Hoets), or by the terms of any legal foundation of which assent or obedience to such resolutions forms no part, he cannot, under such circumstances, lawfully exact from any clerk, entitled to claim from him license, admission or institution to such office, benefice, or cure, that such clerk should, as a condition of receiving such license or institution, agree to be bound by such resolutions.

“Within the limits thus laid down, the exercise of the Bishop’s discretion in this respect should be recognized by the Executive Government as legitimate.

“Lastly, the Bishop requires to be informed—

“Whether the document which has been placed in his hands by the Crown is in all respects as it confessedly is in some, an illegal instrument; whether any, and if so, which of its provisions are valid in law, whether it conveys any rights, title, or authority to the Bishop of this diocese and the Metropolitan of this province or not.”

“The words of the Judicial Committee to which the Bishop, I presume, refers (p. 13) are as follows:—Their Lordships state the Supreme Court of the Cape to have been of opinion—

“That the Letters Patent of 1853, being issued after a Constitutional Government had been established in the Cape of Good Hope, were ineffectual to create any jurisdiction, ecclesiastical or civil, within the colony, even if it were the intention of the Letters Patent to create such jurisdiction, which they think doubtful.”

“In these conclusions, they add, “we agree.””

“The Letters Patent then were *ultra vires* and invalid if, and so far as they purported to convey to the Bishop any power of coercive jurisdiction, irrespectively of the sanction of the local legislature, and of the consent express, or implied, of those over whom it might be exercised.

“I am aware of no reason whatever for supposing them to be invalid otherwise than as they may assume to grant this coercive jurisdiction.