

## APPELLATE CIVIL.

*Before Sir Charles A. Turner, Kt., C.J., and Mr. Justice Innes.*

FAKURUDIN SAHIB AND 7 OTHERS (DEFENDANTS), APPELLANTS, *v.*  
ACKENI SAHIB AND 6 OTHERS (PLAINTIFFS), RESPONDENTS.\*

1880.  
January 6.

*Religious Endowments—Act XX of 1863, Section 14—Removal from office of an hereditary trustee.*

Section 14 of Act XX of 1863 is sufficiently general in its terms to empower any person interested in any temple, mosque, or religious endowment, or in the performance of the trusts relating thereto, to sue the trustee, manager, or superintendent, or the member of a committee appointed under the Act, for misfeasance, and also to empower the Court to order the removal of a trustee, &c.

The tomb of a reputed saint became a place of pilgrimage and an endowment was made for the maintenance of the shrine and for the performance of certain religious ceremonies. There was a practice on the part of the proprietors and the managers of the institution to divide among themselves the residue of the income, and to dispose by way of sale or mortgage of the share enjoyed by them. *Held* that this was a religious institution within the meaning of Act XX of 1863.

The 14th section of the Act empowers the Civil Court to remove trustees for misfeasance, &c., and it does not recognize any difference in respect of trustees whether hereditary or selected.

THIS was an appeal against the decree of A. C. Burnell, District Judge of South Tanjore, in Original Suit No. 2 of 1877.

The plaintiffs sued for the removal of the defendants from the management of the Darga at Nagore. It was alleged that the plaintiffs, the defendants, and many others were the proprietors of the said Darga; that the defendants were the headmen and the managers of the institution; and that the latter were guilty of several acts of misfeasance and non-feasance specified in the plaint. The defendants pleaded that the property was of the kind called *Altamga* in the Muhammadan Law; that the defendants were the descendants of the saint in whose honor this institution was founded; that they were hereditary trustees, and not amenable to Act XX of 1863; and that they did not commit any breach of trust.

The District Judge was of opinion that, though the parties admitted the practice of sharing among themselves the residue of the income, there was no documentary evidence to support the

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\* Appeal No. 22 of 1879 against the decree of A. C. Burnell, District Judge of South Tanjore, dated 18th December 1878.

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claims; that the building was a public mosque; and that the shrine was a place of pilgrimage, and that this was a "religious establishment" within the meaning of Act XX of 1863. Upon the evidence he found that the defendants had committed breach of trust, and that the interests of the institution required that they should be removed from office. He decreed accordingly, and the defendants appealed to the High Court on the grounds that the plaintiffs were not entitled to institute the suit; that the defendants ought not to have been required to render an account of their trusteeship; that the District Court acted throughout without jurisdiction; and that the defendants were not guilty of breach of trust or neglect of duty.

The *Advocate-General*, Mr. *Tarrant*, and *A. Rámachandra Áyyar* for the Appellants.

Mr. *Shephard* and *V. Bashyam Áyyangar* for the Respondents.

The Court (TURNER, C.J., and INNES, J.) delivered the following

JUDGMENT:—Regulation VII of 1817 gave the Board of Revenue the general superintendence of all endowments for religious and charitable purposes. Act XX of 1863, in relieving the Board of the duties imposed on it by the Regulation in regard to religious endowments, distinguished between endowments of which the trustee or manager was nominated or confirmed by the Government, and which are referred to in Section 3 of that Act, and those of which the trustee or manager was not so appointed; and although it has been held that the provisions of Section 13 of the Act relating to the rendition of accounts by the trustees and managers to the committee constituted by the Act apply only to the institutions mentioned in Section 3, we can find nothing to control the generality of the terms of Section 14, which empower any person interested in any mosque, temple, or religious endowment, or in the performance of the trusts relating thereto, to sue the trustee, manager, or superintendent, or the members of a committee appointed under the Act, for misfeasance, and also empower the Court to order the removal of a trustee, &c. The plaintiffs, as resident Muhammadans, apart from any pecuniary interest they may have in the income of the institution, are in our judgment sufficiently interested therein to entitle them to maintain suits if the institution be a religious establishment. It does not admit of question that the institution is a religious establishment. It

is not uncommon among Muhammadans to regard the tombs of reputed saints with reverence, and in some cases to ascribe to them so much sanctity that they become places of pilgrimage. The Darga of Kádir Sáhib, the institution to which the suit relates, is such a place of pilgrimage, and for the maintenance of the shrine, and for the performance of certain religious exercises connected with it, the property mentioned in the plaint has been devoted. Whether the plaintiffs or defendants, or any of them, are entitled to the residue of the income, after providing for the proper charges, we need not now consider. It is sufficient to say that there is no documentary evidence in support of their claims, although undoubtedly there has been for a considerable time a practice on the part of the parties to this suit, and of the persons under whom they claim, to divide among themselves something more than such surplus, and to dispose by way of sale or mortgage of the share enjoyed by them. That the endowment was made mainly for the purposes to which we have adverted—the maintenance of the shrine and the performance of ceremonies—is not denied. In our judgment the Darga is a religious institution within the meaning of the Act.

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The Court below having rightly entertained the suit, we have next to determine whether the trustees are removable from office by this Court, although they may be hereditary and have descended in regular succession from the original trustees. The 14th section of the Act of 1863 empowers the Civil Court to remove trustees for misfeasance, breach of trust, or neglect of duty, and it does not recognize any difference in the powers conferred on the Courts in respect of trustees whether hereditary or selected.

It remains then to determine whether sufficient cause has been shown for the removal of the trustees. Although some of the specific acts of misconduct imputed to the trustees may be excused on the ground that they may have believed long usage sanctioned them, yet it is sufficiently shown that the properties appertaining to the shrine have been grossly neglected and thereby lost or left uncollected, and that no proper accounts have been kept. This amounts to neglect of duty, which justifies the removal of the trustees. For these reasons we shall affirm the decree of the Lower Appellate Court and dismiss this appeal with costs.