

In the meantime an appeal was presented by the defendant and that appeal was dismissed on the 28th of March 1877.

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Then present application for execution was made on the 7th February 1880. Clause 2, Article 179 of the Limitation Act of 1877 fixes the date of the order of the Appellate Court, when there is an appeal, as the point from which the three years is to count.

On this ground the plaintiff is in time.

Defendant contends that when, as in this case, execution has been applied for before the date of the Appellate Court's decree, then the latter is to be held not the point to count from but the application for execution is the proper point. We do not see any foundation for this contention. It seems to us that when there is no appeal, the date of the decree or of application is the point, but not when there is an appeal.

Moreover it appears to us that the application by plaintiff to the Court for the money paid in by the purchaser is a step taken to aid in the execution of the decree.

We reverse the orders of the Lower Courts and direct that the plaintiff shall have execution according to law with costs in the Lower Courts and in this Court.

Appeal allowed.

APPELLATE CIVIL.

Before Sir Charles A. Turner, Kt., Chief Justice, and Mr. Justice Muthusami Ayyar.

SAMMANATHA PANDARA (2ND DEFENDANT), APPELLANT, v.
SELLAPPA CHETTI (PLAINTIFF), RESPONDENT.*

1879.
April 7th.

Debt contracted by the head of a mattam—Liability of the successor in office.

The property belonging to a Mattam is in fact attached to the office of Mattam-dár, and passes by inheritance to no one who does not fill the office. Though it is in a certain sense trust property, the superior has large dominion over it, and is not accountable for its management nor for the expenditure of the income, provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the objects of the institution. Acting for the whole institution, he

* Appeal No. 35 of 1877 against the decree of the Subordinate Court of Tinnevely, dated 18th December 1876.

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may contract debts for purposes connected with the *mattam*, and debts so contracted might be recovered from the *mattam* property, and would devolve as a liability on his successor to the extent of the assets received by him.

The origin of *Mattams* discussed and explained.

THIS was an appeal against the decree of A. Annusamy, Subordinate Judge of Tinnevely, in O.S. No. 60 of 1875.

The *Advocate-General* and *T. Ráma Ráu* for the Appellant.

Mr. *Handley* and *R. Balaji Ráu* for the Respondent.

The facts of the case and the arguments of counsel are fully stated in the following

JUDGMENT.—The respondent, Sena Pena Chellappa Chettiar, sued to recover Rs. 9,703-0-4, the balance of interest due on a bond for Rs. 7,000, dated February 11th, 1872, purporting to be executed by the Chokanatha Thambiran as agent of the Gnana Sammantha, Pandara Sannadhi of the Darmapuram Athinam. He has impleaded as defendants the Thambiran Swáminátha by whom he asserts the bond was executed, and the present appellant and another Thambiran who at the time the suit was instituted claimed adversely to one another the office of Pandara Sannadhi of the *mattam*. He prayed for a decree awarding payment of the sum claimed with interest at 12 per cent. per annum up to the date of payment, and costs with interest on costs by the defendants and out of the property of the *mattam*.

The defendant, Swáminátha Thambiran, did not appear to defend the suit. The appellant and the other defendants pleaded that they had no knowledge of the debt, nor that it was contracted for the purposes of the *mattam*; that Swáminátha Thambiran had no authority to contract the debt; and that neither the appellant nor the other defendants nor the property of the *mattam* could be held liable for its satisfaction.

The Court of First Instance found that the bond was executed by Swáminátha Thambiran as the agent and in the presence of the late Pandara Sannadhi of the *mattam*; that the bond had been given on a settlement of accounts arising out of debts for cloths sold, hundis provided, and cash advanced for the purposes of the institution and on payment of a further sum of money; that the debt was from time to time contracted through a person who acted as agent for the *mattam*; and that the executant of the bond, whether he filled the office of Chokanatha Thambiran or Subramania Thambiran, was equally competent to execute a bond as

agent of the Pandara Sannadhi, inasmuch as both the Chokanatha and Subramania Thambiran transact the business of the Pandara Sannadhi.

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The Court of First Instance therefore passed a decree for the sum claimed against the head of the mattam, whoever he might be, whether the appellant or the other defendants claiming that office and against the property of the mattam. Against this decree the appellant presented the appeal now before the Court which originally came on for hearing in 1877, but, it appearing that proceedings were pending to determine the succession to the office of Pandara Sannadhi, it was arranged that the hearing of the appeal should be adjourned till the question of succession had been determined. It has since been decided that the appellant is the lawful successor of the deceased Pandara Sannadhi, and the appeal has now been again brought on the file for disposal.

It has been contended by the Advocate-General that a decree can pass in this suit neither against the appellant nor against the property of the mattam; that a Pandara Sannadhi is a mere trustee of the property of the mattam; and that although a trustee may be at liberty to incur a liability, which may become a charge on the property of the trust for proper purposes connected with the trust, there is no evidence to show that the purposes for which debt was incurred to the respondent were proper purposes connected with the trust.

It is also argued that although a Pandara Sannadhi might have power to expend out of funds in his hands sums for the purposes for which it is alleged the late holder of that office incurred the debt now sued for, he is not at liberty to contract debts for such purposes, and that debts so contracted would not be binding on his successor nor recoverable from the trust estate. Lastly it is contended that the authority of Swáminátha Thambiran to execute the bond in suit is not sufficiently established, and that if it be established he had no authority to create a charge on the property of the mattam, and in fact did not create a charge on it.

We deal first with the objection regarding the insufficiency of the evidence to establish the authority of Swáminátha Thambiran to execute the bond in suit as the agent of the Pandara Sannadhi. It is not denied and there is evidence to show that the Pandara Sannadhi does not execute instruments under his own hand, but

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that he employs for that purpose officers who are termed Chokanatha and Subramania. The bond purports to be executed by Swáminátha as Chokanatha, and the appellant's witnesses have denied that he at any time filled that office; but it is admitted by one of them, Kondappa Pillai, the Kurnam of the Mattam, that the Subramania as well as the Chokanatha Thambirans used to execute bonds under the orders of Pandara Sannadhi. Although, then, Swáminátha Thambiran may not (we do not say that he did not) at the time fill the office of Chokanatha the circumstance that he so described himself in the bond would not justify us in finding that he had not authority to execute it, if on other evidence we were satisfied that in executing it he acted under the orders of the Pandara Sannadhi.

Now we have the evidence of Dharma Perumal Pillai's son Vasudévan that the debts were contracted through his father on behalf of the Pandara Sannadhi, and this evidence is corroborated by the evidence of Nelliya Pillai who was engaged as a clerk to keep the accounts of the mattam, and in support of the testimony of these witnesses as to the existence of dealings with the respondent on behalf of the Pandara Sannadhi and as to their employment we have the letter (document C). These witnesses have also deposed that the account was settled and the bond executed with the sanction of the Pandara Sannadhi, and we accept their evidence on this point notwithstanding the discrepancy in it to which the Advocate-General has called attention, viz., that Vasudévan says the account was settled and the bond executed in the presence of the Pandara Sannadhi, while Nelliya says that he and Vasudévan Pillai went inside and explained the particulars of the account to the Pandara Sannadhi who assented to it and ordered the bond to be written. It appears to us probable that further examination would have elicited from Vasudévan that the bond was not executed in the immediate presence of the Pandara Sannadhi, but by using that term he meant it was executed when he was in the neighbourhood and could be consulted, and after he had been consulted and had approved of its execution.

We find, then, that the Thambiran Swáminátha executed the bond in suit as the agent of the Pandara Sannadhi, and with his authority.

It remains for us to determine whether the amount due on the bond can be recovered from the appellant as the successor in office of the Pandara Sannadhi, by whose authority it was executed.

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The origin of mattams is ordinarily as follows: A preceptor of religious doctrine gathers around him a number of disciples whom he initiates into the particular mysteries of the order, and instructs in its religious tenets. Such of these disciples as intend to become religious teachers, renounce their connection with their family and all claims to the family wealth, and, as it were, affiliate themselves to the spiritual teacher whose school they have entered. Pious persons endow the schools with property which is vested in the preceptor for the time being, and a home for the school is erected and a mattam constituted. The property of the mattam does not descend to the disciples or elders in common; the preceptor, the head of the institution, selects among the affiliated disciples him whom he deems the most competent, and in his own life-time installs the disciple so selected as his successor, not uncommonly with some ceremonies. After the death of the preceptor the disciple so chosen is installed in the gaddi, and takes by succession the property which has been held by his predecessor. The property is in fact attached to the office and passes by inheritance to no one who does not fill the office. It is in a certain sense trust property; it is devoted to the maintenance of the establishment, but the superior has large dominion over it, and is not accountable for its management nor for the expenditure of the income, provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the objects of the institution. Acting for the whole institution he may contract debts for purposes connected with his mattam, and debts so contracted might be recovered from the mattam property and would devolve as a liability on his successor to the extent of the assets received by him.

We do not of course mean to lay it down that there are not mattams which may have been established for purposes other than those we have described, nor that the property may not in some cases be held on different conditions and subject to different incidents. We have described the nature of the generality of

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such institutions and the incidents of the property which is devoted to their maintenance. It is not shown that the Darmapuram Athinam differs from the institutions we have described, nor that the property held by its superior is held subject to any peculiar conditions. It is therefore in our judgment liable to the satisfaction of all debts properly incurred by the late Pandara Sannadhi in the execution of his office. The respondent has produced evidence which establishes *prima facie* that the debt he seeks to recover was so incurred. A portion of it arose from the sale of cloths which the Pandara obtained to distribute to the disciples and to other persons on ceremonial occasions, and it is shown that such distributions are usually made by the Pandara Sannadhi. Other portions of the debt were incurred in the purchase of hundis to remit moneys necessary for the expenses of litigation in which the institution was engaged, and the residue was taken for the general purposes of the institution.

It has not been alleged that the gifts of cloths were disproportionate to the large revenues of the institution; although it is no doubt true that considerable debts had been contracted, the Darmapuram Athinam still held considerable properties, and it has not been shown, as the appellant might have shown by the production of the accounts, that the funds taken for the general purposes of the mattam were not so applied. We find that the debt was incurred by the late Pandara Sannadhi for proper purposes, and we consequently hold that it can be enforced against the appellant to the extent of the assets which have come to his hands as the present incumbent of the office. The decree of the Court below is substantially affirmed, but it may be corrected so as to declare more specifically the relief to which we hold the respondent entitled and to avoid the suggestion that the debt is a direct charge on the property.

The appellant must bear his own costs and pay the respondent's costs of this appeal.
