

which had been taken under the control of the Board of Revenue, under the provisions of Regulation VII of 1817, and, after the passing of Act XX of 1863, had been transferred to the hereditary trustee, manager, or superintendent, in accordance with the provisions of Section 4 of Act XX of 1863.

It is conceded that the District Judge is right in saying that this particular institution was never taken under the control of the Board of Revenue, but remained under the management of the trustee, manager or superintendent, appointed from time to time, according to the custom of the institution, and was not transferred under the provisions of Section 4 of the Act.

It is contended that, if the Board of Revenue did not, they ought to have exercised control over this and other religious institutions in *Malabar*, and that, though this institution was not transferred, we should regard it as having been transferred, as by so doing we should carry out the intention of the Act. The Act no doubt was intended to embrace all religious institutions over which the Board of Revenue had formerly a power of control, and it was [405] probably therefore the design of the framers of the Act to embrace in its provisions this and other institutions similarly situated. But in the particular question before us we must hold that this institution is not within the language of Section 5 of the Act, and that, if the Legislature intended that the provisions of Section 5 should apply to institutions which had not been transferred in accordance with Section 4 as well as to those which had been so transferred, it has not expressed what it intended. We cannot give effect to the Act beyond the expressed intention which confines the operation of Section 5 to cases in which the property has been transferred. We must hold that the Judge had no jurisdiction under the section to pass the order, and must set it aside, but without costs.

NOTES.

[As to the *melkoima* right referred to by the Lower Court in this case, *See* 18 Mad. 1 P. C. affirming 14 Mad. 153.

With regard to the point that there should have been a transfer by the Board of Revenue for the Religious Endowment Act (1863) s. 5 to apply, this case was followed in (1910) 14 C. W. N. 1104 and cases of applications under sec. 14 were there distinguished.]

APPELLATE CIVIL.

[9 Mad. 405.]

The 12th December, 1879.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Ramakistnam.....Plaintiff

and

Ragavachari and Vijiammal.....Defendants.*

A District Munsif's Court has not authority to inflict fines on Karnams of Villages which are under attachment by that Court for breach of duty on the Karnam's part.

THIS was a case stated under Section 617 of Act X of 1877 by the Munsif of *Ariyalur*.

The following is taken from the Munsif's reference :—

* Case No. 19 of 1879 stated under Section 617 of Act X of 1877 by S. Ramasami Mudajar, District Munsif of Ariyalur, in Small Cause Suit No. 692 of 1879.

“In the Small Cause Suit No. 268 of 1879 the plaintiff claims arrears of pay due to him for Fasli 1286 as Karnam of the Istimrar village *Thanthayaculam*. The defendants are (the second) the proprietor of the village and (the first) the Receiver appointed by this Court to collect the rent for Fasli 1286 from this village in execution of the decree in O. S. No. 474 of 1875, *Trichinopoly* Munsif's Court, as that decree is being executed in this Court.

“The second defendant states that the plaintiff failed to discharge his duties properly in the said Fasli; that the accounts, &c., were not furnished to him, and in consequence he had to [406] report the matter to this Court. The then presiding District Munsif not only ordered the necessary accounts to be furnished by plaintiff to second defendant, but fined the plaintiff by directing that he should lose three months' pay. It is now contended on the part of the defendants that plaintiff cannot include the three months' pay in this suit. The plaintiff's Vakil urges that this Court had no jurisdiction to inflict the fine, and that the same cannot be deducted from the amount sued for.”

The Munsif considered that his Court had no jurisdiction to fine Karnams, but that by Regulation XXIX of 1802, Section XVI, and Section XI of Regulation XXV of 1802 the Court of Adalat of the Zilla was that which had jurisdiction, and that therefore the District Court has jurisdiction at present.

He referred the question whether a District Munsif's Court has authority to inflict fines on Karnams of villages which are under attachment by the said Court for breach of duty on the Karnam's part.

There was no appearance for the Plaintiff.

The Advocate-General (Hon. *P. O'Sullivan*) for the Defendants.

The Court (INNES and MUTTUSAMI AYYAR, JJ.) delivered the following

Judgment:—We think the District Munsif is right that District Munsifs have no power to inflict fines on Karnams in the circumstances stated.

NOTES.

[In (1888) 12 Mad. 188 it was held that a suit by a Zamindar for the dismissal of a Karnam cannot be entertained by a District Munsif.]