

having attempted to get them to attest a forged document. The evidence of the defence witnesses, which has been disbelieved by the Judge and Assessors, does not seem to us to be of any great weight. Taking the whole of the circumstances into consideration, we see no reason to interfere with the decision of the Sessions Court.

On the point of want of sanction, there was admittedly sanction so far as regards the first prisoner. In the case of the second, he was not a witness in the Civil Suit and no sanction could be required. With regard to the fourth and fifth prisoners, they were merely witnesses in the Civil Suit, and we do not consider they fall within the meaning of "parties to the proceeding" used in Section 469 of the *Criminal Procedure Code*.

This leaves only the sentences to be considered. The Sessions Judge has kept in view the degrees of criminal responsibility attaching to each of the prisoners and sentenced them accordingly, and we see no reason to differ from the view taken by him.

The appeal is therefore dismissed.

NOTES.

[In (1906) 30 Mad. 226, it was held that the defendant in a Civil Suit ought not to be allowed to prejudice the trial of such suit by launching and proceeding with a criminal prosecution on the same facts against the plaintiff and his witnesses and such proceedings if launched will be stayed by the High Court in the exercise of its powers of superintendence.]

[See also 25 Mad. 671—2 Weir 173.]

APPELLATE CIVIL.

The 19th August 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE TARRANT.

Ittuni Panikkar and another.....Appellants

and

Irani Nambudripad.....Respondents.*

Act XX of 1863 not applicable to Malabar Devaswams.

The District Courts have no power to appoint trustees under Section 5† of Act XX of 1863 upon a vacancy occurring in the office of trustee, unless property has been actually transferred to the former trustee under the provisions of Section 4.

[402] THE respondent in this appeal presented a petition under Section 5† of Act XX of 1863 to the District Court of South Malabar, praying that he might

* C. M. Appeal No. 719 of 1880 against the order of H. Wigram, Officiating District Judge of South Malabar, dated 26th October 1880.

† [Sec. 5 :—Whenever, from any cause, a vacancy shall occur in the office of any Trustee, Manager, or Superintendent, to whom any property shall have been transferred under the last proceeding Section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the Mosque, Temple, or religious establishment, to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a Manager of such Mosque, Temple, or other religious establishment, and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office. The Manager so appointed by the Civil Court shall have, and shall exercise, all the powers which, under this or any other Act, the former Trustee, Manager, or Superintendent, in whose place such Manager is appointed by the Court, had or could exercise in relation to such Mosque, Temple or religious establishment, or the property belonging thereto.]

he appointed Uralan (trustee) of the *Elankunna* Devaswam (temple), inasmuch as the office of Uralan was vacant.

The appellants also presented a petition in opposition, praying that if a trustee were appointed, they themselves or the Collector or the Zamorin Raja of *Calicut* might be selected.

The District Judge, after finding upon the evidence that the office of Uralan of this Devaswam had been vacant since 1851, decided against the appellants' claim on the ground of unfitness and proceeded as follows:—

“The Collector cannot be appointed (*vide* Section 22* of Act XX of 1863), and the Zamorin Raja, even if he would accept the responsibility, has no particular claim, provided that petitioner *Irani Numbudripad* is a fit and proper person.

“I see no reason why I should not carry out the wishes of the last Uralan *Parameswaran Mussad* and appoint *Irani Numbudripad* to the office.

“As this is the first occasion on which the provisions of Act XX of 1863 have been applied to this district, and as my jurisdiction to act under it is denied, I wish to state at length my reasons for deciding that I have jurisdiction.

“The right of the Sovereign to superintend all religious endowments has always been recognized in *Malabar*. Before the British occupation each Raja or petty Chieftain exercised what was called the *Melkoima* right.

“The British Government succeeded to such rights and passed Regulation VII of 1817, the preamble of which recites that it is the duty of the Government to provide that all endowments be applied according to the real intent and will of the grantor. The reports called for under Section 9 of that Regulation were never submitted from this district.

“On 23rd December 1817 the Collector (*Mr. Vaughan*) recommended the suspension of the Regulation in this district, as all the temples were private endowments.

“Some further correspondence took place in 1841, when the Collector was instructed to hand over the temples to private individuals. *Mr. Conolly* then reported that the only temples under [403] Government management were those that had escheated from the *Betuth* Raja and the *Chenai* Nair.

“The management of the devaswams belonging to the former was made over to the Zamorin Raja, and the management of the latter to the *Palghat* Raja.

“The Collector also interfered in the case of two other devaswams, regarding which there were disputes between two Rajas, and made them over to the Zamorin Raja.

“When Act XX of 1863 was passed, the Collector had long ceased to interfere with the devaswams. Disputes between rival claimants had been litigated in the Courts from time to time, and a general impression prevailed that Act XX of 1863 was not intended to apply to *Malabar*.

“I am of opinion that the impression was erroneous. The Act divides all religious establishments into those in which the nomination of the trustee,

*[Sec. 22:—Except as provided in this Act, it shall not be lawful, after the passing of this Act, for any Government in India, or for any officer of any

Government not to hold charge henceforth of property for support of any Mosque, Temple, etc.

Government in his official character, to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any Mosque, Temple, or other Religious establishment, or to take any part in the management or appropriation of any endowment made for the maintenance of any such Mosque, Temple, or other establishment, or to nominate or appoint any Trustee, Manager, or Superintendent thereof, or to be in any way concerned therewith.]

manager, &c., is vested in Government (Section 3) and those in which it is not so vested (Section 4).*

"All the devasawms in Malabar fell under Section 4, and Sections 5 and 6 are applicable to the trustees or managers thereof. There was no occasion to make formal delivery of any property under Section 4, because the property was already in the hands of the trustees. As the trusteeships are almost invariably hereditary, there would be no occasion to resort to Section 5, unless the family of the trustees became extinct as here. But even with this limited application of the Act much litigation might have been avoided." The District Judge accordingly appointed the respondent as trustee of the devaswam.

Against this order the present appeal was preferred.

The Advocate-General (Hon. P. O'Sullivan) and Ramachandrayyar for Appellants.

Mr. Wedderburn for Respondent.

The Advocate-General:—

The District Court had no jurisdiction to make this order. The question depends on the construction of Act XX of 1863, Sections 3, 4 and 5. At the time of the passing of the Act this temple was under trustees not subject to Government. The provisions of Regulation VII of 1817 were never applied, and the temple was never superintended by the Board of Revenue. Conceding that Section 4 is applicable to this case, Section 5 under which the [404] Judge acted does not apply. No property was transferred under Section 4 to any trustee.

Mr. Wedderburn:—

The general superintendence of all Hindu temples is vested in the Board of Revenue by Regulation VII of 1817, and though this temple was not taken charge of, yet it ought to have been managed together with its property; and the fact that there was no retransfer of property (for which there was no necessity, as the Board of Revenue did not comply with the direction of the Regulation VII of 1817) as provided in Section 4 ought not to deprive this temple of the benefits provided by the subsequent sections of the Act. In order to carry out the intention of the Act the Court should consider this case within the meaning, if not the letter, of the law.

The judgment of the Court (INNES and TARRANT, JJ.) was delivered by INNES, J.

Judgment:—The order of the District Judge is made under a supposed discretion, vested in him under Section 5 of Act XX of 1863. On referring to that section, however, we find that it relates exclusively to cases in which the vacancy has occurred, and the dispute arises in respect of a religious institution

*[Sec. 4:—In the case of every such Mosque, Temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any Trustee, Manager, or Superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of, the Government, or any public Officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such Trustee, Manager, or Superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the Superintendence or in the possession of the Board of Revenue, or any Local Agent, and belonging to such Mosque, Temple, or other religious establishment, except such property as is hereinafter provided; and the powers and the responsibilities of the Board of Revenue, and the Local Agents, in respect to such Mosque, Temple, or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue, or any Local Agent, previous to such transfer, shall cease and determine.]

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 Mudajiar, District Munsif of Ariyalur, in Small Cause Suit No. 692 of 1879.