in favour of Subbaiyar was declared by the decree in original suit No. 37 of 1888 invalid and must, therefore, be treated as cancelled. Moreover the payee of a promissory note is entitled to pay an endorsee when the note is dishonored and, striking out the endorsement, to sue the maker for compensation or to re-issue the note. See Byles on *Bills of Exchange*, fourteenth edition, page 195. The objection that respondents have not taken out a certificate to collect the debts due to Lakshmana Chetti is not pressed, the certificate being produced before us.

This appeal fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

VYTHILINGA PANDARA SANNADHI AND OTHERS (DEFENDANTS), APPELLANTS,

1893. Oct. 18, 20, 26.

v.

SOMASUNDARA MUDALIAR AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Temple repairs—'Katlais' or distinct endowments—Liability for repairs—Proof of custom in absence of endowment-deeds.

The 'panchayatdars' or managers of a temple, being directed by a Magistrate to repair the gateway of a store-house within the temple precincts and under their immediate control, spent Rs. 10-8-0 in so doing from the funds of a 'katlai' or endowment of which they were managers. They then sued the trustees of two other 'katlais' for recovery of the said sum on the ground that, by the usage of the temple, the cost of repairs was payable from the defendants' income, and asked for a declaration that the duty of executing repairs fell upon the defendants' 'katlais':

Held that, in the absence of any endowment or trust-deed regarding the katlais,' the decision must be found in the usage of the temple, upon proof of which judgment was given for the plaintiffs, and a declaration added to the effect that the defendants were liable for repairs to the temple so far as the surplus funds of their 'katlais' should permit.

APPEAL against the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in original suit No. 45 of 1890.

The defendants preferred this appeal.

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* Appeal No. 64 of 1892.

VYTHILINGA PANDARA SANNADHI v. SOMASUNDARA MUDALIAR.

The facts of this case appear sufficiently for the purposes of this report from the following judgments of the High Court :—

MUTTUSAMI AYYAR, J.—There is an ancient temple called Sri Tiyagaraja Swami temple in the town of Tiruválúr in the Negapatam taluk of the district of Tanjore. Respondents are its 'panchayatdars' or managers, and appellants are trustees of two of the 'katlais' attached thereto called Abhisheka Katlai and Rajan *alias* Saba Katlai. In ordinary parlance, the term 'katlai, as applied to temple endowments, signifies a special endowment for certain specific service or religious charity in the temple. Ardajama Katlai or endowment for midnight service is an instance of the former and Annadana Katlai or an endowment for distributing gratis food to the poor is an example of the latter. In this sense, the word katlai is used in contradistinction to the endowment designed generally for the upkeep and maintenance of the temple. In the case of some important temples, the sources of their income are classified into distinct endowments according to their importance, each endowment is placed under a separate trustee, and specific items of expenditure are assigned to it as legitimate charges to be paid therefrom. Each of such endowments is called also a katlai and the trustee who administers it is called the katlaigar or the stanik of the particular katlai. The term 'katlai' is used in the present suit in this sense and exhibit R enumerates the several katlais that exist in connection with the temple at Tiruválúr together with their average income from fasli 1221 to fasli 1228. When the institution was under the immediate control of officers of the Government, it appears from that exhibit that 'Abhisheka Katlai' under first appellant's management had an average income per year of 8,734 pons $2\frac{3}{8}$ fanams or Rs. 13,647-3-11, and that Rajan Katlai and Annadana Katlai, which are under second appellant's management, yielded an annual income of 10,208 pons 9 fanams or Rs. 15,951-6-6, while the 'Ulthurai Katlai,' which is under the direct management of the panchayatdars, produced an income of pons 6,247 or Rs. 9,760-15-0. It is these four katlais that are important, the other katlais having only small endowments whose average income is not likely to be in excess of their current expenses. The contest in this suit is as to appellants' liability to provide from the endowments in their charge for the necessary repairs of the temple and of the large tank outside called Kamalalayam which is attached to it.

The facts which have given rise to this litigation are shortly these. Within the precincts of the temple there is a building, called the Kottaram, used as the store-room or store-house wherein provisions required for the use of the temple are usually secured by the panchayatdars. About November 1887, it came to the knowledge of the Head Assistant Magistrate in charge of the Negapatam taluk that the gateway giving entrance into the store-room was in such a state of repair as to endanger the safety of persons using it or passing near it. He called upon appellants to remove this source of danger under section 133 of the Criminal Procedure Code, but they alleged that respondents were the parties bound to execute the necessary repair according to the usage of the temple. After hearing both parties, the Magistrate declined to decide the question and held that the store-house being under the immediate control and in the charge of respondents as trustees of the Ulthurai Katlai, they were bound, under the Code of Criminal Procedure, to execute such repairs as were necessary to prevent danger to the public and made an order to that effect on the 23rd August 1888. From the 4th to the 7th October 1888 respondents spent Rs. 10–8–0 from the funds of the 'Ulthurai' Katlai under their management and repaired the gateway in obedience to the above order. On the 10th December 1888 they instituted this suit to recover the amount so spent by them from the funds of the katlais under appellants' management. Their case is that the two katlais under appellants' management consist of landed properties of the temple yielding an annual income of Rs. 30,000 and 20,000 respectively, that, by the usage of the institution, the cost of repairing the temple and the tank and of erecting necessary buildings is payable from that income, that appellants were bound to contribute to the cost of such repairs and structures in the proportion of two-thirds from the Abhisheka Katlai and one-third from the Rajan Katlai. They prayed for a decree directing appellants to pay them Rs. 10–8-0 with subsequent interest and costs, and declaring that the duty of executing repairs, as mentioned in the plaint, devolved on appellants by the usage of the temple. These, however, denied their liability and contended that there were various katlais attached to the temple in question, that they had separate buildings assigned to them within the precincts of the temple, and that it was the duty of katlaigars or trustees of the katlais to keep their own buildings in repair. They pleaded also to the

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jurisdiction of the Subordinate Court alleging that the present suit was cognizable by a Small Cause Court and that the staniks of the Ulthurai Katlai should be co-plaintiffs. But they admitted that "on certain occasions, when funds were available, certain repairs "were executed by them," adding that they were so executed at their will and pleasure and that respondents had no right to compel them to execute such repairs.

The two preliminary objections taken to this suit are that it is cognizable by a Court of Small Causes and that the staniks of the Ulthurai Katlai ought to have been made parties to it. They form the subject of the first and fourth issues, which the Subordinate Judge has determined against appellants. The plaint contains a prayer for a declaratory decree, which a Court of Small Causes is not competent to pass. Nor is it shown that the staniks of the Ulthurai Katlai are not mere temple servants subordinate to the panchayatdars. There is also no doubt that as dharmakartas respondents are bound to see that the temple is kept in proper repair by those who are bound to do so according to usage. In my judgment the Subordinate Judge has properly disallowed both the preliminary objections. Again, it is not seriously denied that Rs. 10-8-0 have not been spent by respondents upon the repair of the Kottaram as found by the Subordinate Judge and the substantial question argued on appeal is as to appellants' liability to make the repair out of the funds of the katlais under their management. This forms the subject of the second issue and the Subordinate Judge has determined it in favour of respondents. No endowment or trust-deed is forthcoming in regard to the katlais and it is conceded that the rule of decision must be found in the usage of the temple. The contention in appeal, therefore, is that the evidence does not warrant the finding of the Subordinate Judge in respondents' favour.

In support of the finding there is first the admission made by appellants themselves. In their written statements they averred that they executed repairs when funds were available. Though they qualified this admission by stating that they were under no obligation to do so, I agree with the Subordinate Judge that this statement is entitled to no weight. As katlaigars, appellants are trustees and they can only spend the income of the trust property upon the particular trusts attached to those katlais, and the explanation that they executed repairs *at their pleasure* is *not* intel-

ligible. Further, the first defendant stated in his evidence that the lands under his management as katlaigar are properties originally granted for the use of the temple by former sovereigns of Tanjore and that their income is first applied to the expenses of daily worship and of festivals and that the surplus is then spent on repairs. Adverting to a temple building called Porpandara, he deposed that it was in the exclusive possession of respondents and the expenses of its repair, as of several other buildings in the possession of respondents, were borne by the two katlais in the proportion of two-thirds and one-third. Moreover, it is in evidence that the katlai lands were in the possession of the Collectors of the district till 1847, when they were formally made over to appellants' predecessors. The muchalkas which these executed on that occasion contain a distinct acknowledgment that the katlai lands were originally granted to Sri Tiyagaraja Swami and an undertaking to apply the income derived therefrom to the said temple. This is significant as showing that the repair of the temple was a trust to which the surplus income had to be devoted according to the original grant. I have already referred to exhibit R and showed that, so far as the amount of average income is concerned, Abhisheka Katlai, Rajan Katlai and Ulthurai Katlai are the most prominent as being in a position to have a surplus at their disposal. It appears, however, from the sanad G and exhibit T and it is also conceded for appellants that the mohini or money allowance paid by the Government to the panchayatdars which (as is seen from exhibit N1) forms the largest portion of the income of the Ulthurai Katlai is not chargeable with the cost of repairs, as it is an endowment for meeting certain defined items of expenditure. As argued by respondents' pleader, it is antecedently probable that if appellants' katlais alone bear the cost of repair, they do so because their large income is likely to leave a surplus available for being laid out on repairs.

Exhibit H1 is an account dated July 1839, and it enumerates the various duties which devolve on the katlaigars and in the case of appellants looking after repairs is specified as one of them, whilst in the case of Ulthurai Katlai no similar duty is mentioned. Again, the same account shows that so early as 1829 an establishment for carrying out ordinary repairs was kept up by appellants' katlais and its cost was paid out of the funds of those katlais.

Another group of documents, exhibits J to Q, is referred to by

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the Subordinate Judge in paragraph 11 of his judgment as evidencing actual execution of repairs at the cost of appellants' katlais. Their genuineness is not questioned in appeal and their contents show that both appellants or one of them executed repairs from time to time in 1829, 1831 and 1832. It is argued on behalf of appellants that they merely superintended the execution of the repairs, but that they were paid for from the funds provided by the Collectors of the district as per estimates previously sanctioned by them. The exhibits specify the estimated amount sanctioned by the Collectors under it, the amount expended on repairs on each occasion and are signed by the staniks of both katlais or by one of them and countersigned by taluk officials. It is not explained why the representatives of these katlais were always selected to execute the repairs in preference to panchayatdars if their katlai funds were not spent under previously sanctioned estimates. The Subordinate Judge naturally presumes that the course of business consisted in the katlaigars submitting estimates of repairs, obtaining the Collector's sanction for the outlay from the katlai funds and then executing the repairs from such funds in accordance with the estimate. I cannot say that this inference is, under the circumstances, unreasonable.

Moreover, exhibit Y shows that in 1849 the Collector sanctioned the expenditure of Rs. 10,000 upon repairs on applications and estimates submitted by the katlaigars. Though, as argued by appellants' pleader, the exhibit does not mention the names of the katlaigars, yet it is material in so far as sanction is sought for laying out the income of katlais on repairs.

It appears further from exhibit D that so recently as 1886 the trustee of the Abhisheka Katlai corresponded with the Deputy Tahsildar of Tiruvarur acting on behalf Ulthurai Katlai on the subject of certain repairs.

It appears that first appellant did not repudiate his liability to repair, but entered in to an explanation why it was not then necessary to do the repairs.

There is again exhibit H which shows the amount required in August 1833 for consecrating an idol which was lost in 1802 and discovered in 1833. It purports to be a dittam or estimate of necessary expenses submitted to the Collector, and the amount entered as received from the Huzur is Rs. 586 which is divided

between the Abhisheka Katlai and Rajan Katlai, viz., Rs. 386 for Abhisheka Katlai and Rajan Katlai and Rs. 200 for Annadana Katlai. It is clear that the Collector did not sanction the outlay from the public treasury; whence did he then get the necessary funds? It is not unreasonable to infer from exhibit H1 that the funds came from those katlais among the trusts of which the repair or Tiruppani of the temple finds a place.

On the other hand, our attention is drawn to certain facts by appellants' pleader as favoring their contention. The first fact to which reference is made is the preparation in 1820 of a new dittam or 'standing budget estimate' under the order of the Collector of Tanjore who then exercised control over the management of Hindu temples in the district. By exhibit T he directed that the various sources of income should be estimated and that 20 per cent. should be deducted therefrom and kept as a reserve fund for meeting loss from floods, from withering of crops, from high prices and other unlooked for causes and observed that, even if there were no such loss, the reserve fund was needed for the purpose of repairing the temples and preserving them in the same condition. Exhibits N1, O1, P and R enumerate the several sources of income for the three principal katlais and for the whole temple including all the katlais and the 20 per cent. deduction is entered against all sources of income except the mohini allowance paid by Government for the daily and festival expenses of the temple. In exhibit O1, which is the dittam account for the Abhisheka Katlai, there is an entry under the head of extra expenses in the column of remarks "cost of repairs not included "in the new dittam. Hence the decrease." This is referred to on respondents' behalf as suggesting the inference that, prior to the preparation of the new dittam account, such cost formed part of the old dittam of the katlai. However this may be, these exhibits do not throw light on the ancient usage of the temple before us. The constitution of a reserve fund such as was suggested by the Collector might be an administrative improvement conducive to beneficial management. Under what authority, the Collector issued the order T in regard to trust properties is not clear. It had no especial reference to the temple at Tiruvarur nor was its primary object to create a fund for repairs or to supersede any pre-existing obligation in that respect. There is further no evidence to show that a reserve fund was so constituted and since

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kept up. It is indeed suggested that it was not so kept up and the absence of allusion to it in the later accounts of 1830 favours the suggestion. It is noteworthy that appellants did not refer to any such fund in their written statements, or say that repairs were to be made from that fund; their case being that the katlais in their charge were not responsible for undertaking temple repairs and *not* that they as well as the other katlais were bound to meet the cost of repairs in proportion to the income. The contention, therefore, that the exhibits now under consideration negative appellants' liability appears to be an afterthought.

Another matter on which appellants' pleader lays stress is that it is natural that each katlai should repair the buildings in its charge as alleged by them. I am not prepared to attach importance to this contention, or exhibits T to K show that appellants executed repairs to buildings in the temple which are not in their possession, but are in the immediate charge of the panchyatdars and among others to the kottaram or store-room now under consideration.

Another piece of evidence is exhibit VII referred to by the Subordinate Judge in paragraph 16 of his judgment. There is no evidence to show when it was prepared, nor are we referred to any other document which refers to contribution by other katlais towards the cost of repairs. On the whole, the weight of testimony appears to me to be in favour of the conclusion at which the Subordinate Judge has arrived. It is true that there is no endowment deed forthcoming. It is also true that no accounts are produced to show execution of repairs by appellants except for a few years. But it should be remembered that the accounts are with appellants and their omission to produce them is open to remark. But there is the fact that all the katlai lands are lands originally granted for the use of the temple and there is an undertaking to apply their income to the temple. There is next the admission that the surplus income was spent on repairs and there is also the presumption that, unless the execution of repairs was one of the trusts of the katlais, the surplus would not have been so spent. Having regard to the fact that the katlais under appellants contribute also to the daily and festival expenses, the statement that the surplus is alone utilized in carrying out repairs is not improbable. There is further the fact that looking after repairs is entered in H1 among the duties devolving on the

representatives of appellants' katlais. There is also positive evidence as to appellants having actually executed repairs to various temple buildings in 1829–31 and 1832. There is some evidence of conscious liability to execute the necessary repairs in 1849 and 1886. Whilst these facts convey the impression that the katlai funds were spent on repairs because there was an obligation so to spend them, there is no evidence of any other katlai besides having regularly contributed to the cost of the repair. Exhibit VII, which contains a single entry to that effect, is not sufficient evidence of the usage of the temple. The exemption of the mohini allowance from liability for the cost of the repair and a comparison of the average income of the various katlais mentioned in exhibit R raise also a presumption that the liability devolved on the Atheenam Katlais by reason of their being able to command a surplus income. Again, the allusion to the reserve fund, which the Collector proposed to organize in 1820, is an afterthought. There is no evidence that such fund is in existence nor was it referred to by appellants in their written statements. The suggestion that each katlai repairs the buildings in its charge is incompatible with the documentary evidence, which shows that appellants' predecessors repaired various temple buildings which are not under their control and kept up a standing establishment for carrying out small repairs. There is no trace in the evidence of other katlais having regularly contributed to the cost of repairs. Under these circumstances, I am unable to accede to the contention that the finding of the Subordinate Judge on the second issue is contrary to the weight of evidence. The decree of the Subordinate Judge must therefore be affirmed, but a declaration must be added to the effect that defendants are liable for repairs to the temple so far as the surplus funds of their katlais shall permit. The appeal having substantially failed, appellants will pay respondents' costs and bear their own costs.

BEST, J.—I concur.