APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

KALIYANARAMAYYAR (RESPONDENT), APPELLANT, 1896. August 4.

v.

MUSTAK SHAH SAHEB (PETITIONER), RESPONDENT.*

Religious Endowments Act—Act XX of 1863, *ss.* 3, 11—*Suit by manager for rent—Muchalkas granted by the committee.*

Where the committee of a religious institution governed by Act XX of 1863 obtained muchalkas in its own name from the tenants of land belonging to the institution instead of in the name of its manager :

Held, that this fact constituted a mere irregularity and that a suit brought by the manager on such muchalkas is maintainable.

APPEAL under Letters Patent, section 15, against the judgment of Subramania Ayyar, J., in Civil Revision petition No. 160 of 1894.

The facts of the case were as follows :—

The suit is brought by the manager of a Muhammadan temple called the Durga of Goripalayam to recover Rs. 107-5-11 being principal and interest at one per cent. per mensem due on 3 muchalkas executed by defendant to plaintiff for faslis 1299, 1300 and 1301.

The defendant objects to the maintainability of this suit on the grounds that the committee members had no right to issue pattahs and take muchalkas ; that the plaintiff was not the manager during the 3 faslis in question ; that the muchalkas were not given by defendant and that those who have signed them were not authorized by defendant to exchange pattah and muchalka on his behalf.

The Subordinate Judge dismissed the suit.

The material portion of his judgment is as follows :—

Under section 11 of Act XX of 1863, no member of a committee shall be capable of being or shall act as the trustee of a temple for the management of which such committee shall have been appointed, and it is the lawful trustee or the manager of the temple, for the time being that is entitled to the possession of its properties

* Letters Patent Appeal No. 18 of 1896.

KALIYANA-RAMAYYAR v. MUSTAK SHAH SAHEB.

and to the receipt of its income, and the members are not at liberty to claim to be put in his place. Consequently the suit cannot be maintained on the pattahs and muchalkas exchanged by the committee members. Again the manager who now sues as plaintiff was appointed in fasly 1302, and there was no manager during the faslis for which rent is claimed and the muchalkas sued on were not executed by defendant and consequently plaintiff has no cause of action against defendant *Ponduranga* v. *Nagappa*(1).

The plaintiff preferred this petition to the High Court.

Krishnaswami Ayyar for plaintiff.

Sundara Ayyar for defendant.

Subramania Ayyar, J.—The plaintiff, the present manager of a durga (a Muhammadan religious institution) sued upon certain muchalkas alleged to have been executed to the members of the committee, exercising supervision over the durga under Act XX of 1863 by the agent of the defendants for rent due by him to the durga for certain years. The Subordinate Judge, being of opinion that under section 11 of the Act, it was the manager and not the committee that should have obtained the muchalkas from the defendants, held the plaintiff could not maintain this suit upon such muchalkas.

The question is whether the decision of the Subordinate Judge on the point is right.

In dealing with this question it must be remembered that members of committee and managers constitute the different parts of the machinery provided by Act XX, for the due administration of the affairs of the religious institution falling within section 3 of that enactment. And of these two parts members of committees are the persons in whom the general superintendence and control of such institutions are vested. In exercising such general control, it is an unquestionable duty of theirs to see that the rents payable to the institutions are punctually collected and all steps legally necessary for their collection are duly taken. In the performance of this duty, however, the procedure to be observed by them is to get the managers to make the collection and perform all acts necessary for the purpose. Now, if in deviation from this course, they take upon themselves to obtain muchalkas in their own names, what is it but an act done in the discharge

(1) I.L.R., 12 Mad., 364.

of their duty to see to the realization of the rents? Such an act done *primâ facie* in the interests of the institution can hardly be said to be illegal or wrongful so as to make it void as is contended on behalf of the defendant. In my view it is an act which falls within their powers as the controlling authority though, in performing it, they acted in a manner which is not in strict conformity with the procedure prescribed by the law.

Moreover, in the face of the provisions of section 12 of Act XX, it is scarcely possible to contend that there is anything in the nature of the act of collecting rents, considered by itself which renders such an act inconsistent with the proper performance by members of committees of their duties as the supervising authority. For, by the last part of that section, committees are empowered to collect rents directly in the case of lands transferred to them by or under the authority of the Board of Revenue. This provision, though confined to the case of such lands, shows that in the opinion of the framers of the Act, direct participation in actual management by collecting rents is not so outside the legitimate functions of committees as to compel Courts to decide that an act perfectly valid, if done by them with reference to the portion of the endowments consisting of lands transferred by the Board, is utterly void when it is done with reference to other portions of the landed endowments. It seems to me more reasonable to hold that, though the members of the committee in the present case deviated from the strict procedure in taking the muchalkas in their own names instead of having them taken by the manager in his name, yet their action is not absolutely illegal. In a case where a mortgage taken by a bank was questioned on the ground that the mortgagees had no right to take a mortgage concurrently with the loan in order to secure it, as their charter only authorized them to take mortgages 'for debts previously contracted,' Chancellor Kent observed: "and if they should pass the exact line of their power it would rather belong to the Government * * * to exact a forfeiture of their charter, than for this Court in this collateral way, to decide a question of misuser by setting aside a just and *bonâ fide* contract." (*Silver Lake Bank* v. *North*(1)) (see also *Coltman* v. *Coltman*(2)). Similarly here the fact that the members of the committee overstepped the precise limits of their

(1) 4 Johnson, Second Edition at p. 373. (2) L.R., 19 Ch. D., 64.

KALIYANA-RAMAIYAR v. MUSTAK SHAH SAHEB.

authority in obtaining the muchalkas in question may be a ground for charging them with misfeasance under Act XX of 1863, but not for impeaching the documents executed for the rents justly due to the institution under their control.

In short, the obtaining of these documents is not a nullity, but is only an irregularity which could be waived by the defendant, and which he must be taken to have waived, if, as is alleged on behalf of the plaintiff, the defendant got his agent to execute them. The Sub-Judge's view that the suit failed on the ground that the muchalkas stand in the names of the members of the committee is therefore unsustainable.

It is next contended for the defendant that as he denied that the muchalkas were executed with his authority, and as the plaintiff failed to prove such authority, the Sub-Judge's decree should not be disturbed. The language of the judgment of the Subordinate Judge satisfies me that he decided the suit on the preliminary point discussed above, and did not call upon the parties to go into evidence. The decree must therefore be set aside. The suit should be replaced on the file and dealt with according to law. The costs here will abide and follow the result.

Against this judgment the present appeal (under section 15 of the Letters Patent) was preferred.

Sundara Ayyar for appellant.

Respondent did not appear.

JUDGMENT.—The case relied on (*Ramanadan* v. *Rangammal*(1) is not in point. The order of the learned Judge is right. We reject the appeal.

ORIGINAL CIVIL.

Before Mr. Justice Subramania Ayyar.

1896. August 10.

DAVIS

v.

OUNDASAMI MUDALI.*

Indian Contract Act—Act IX of 1872, *s.* 63—*Consideration.*

An agreement, extending the time for the performance of a contract falling under s. 63, Contract Act, does not require consideration to support it.

(1) I.L.R., 12 Mad., 266.

* Civil Suit No. 110 of 1895.