10 he can solemnize a marriage only during certain hours, and under section 32 he is bound to register the marriage in a prescribed manner. In the present case Father Saurez alleges that he has registered the marriage. It is admitted that he used the Roman ritual, but he says that he had the permission of his Bishop to do so. There is nothing to show that a marriage solemnized with this ritual under sanction of a Bishop of the Syrian Church is not solemnized according to the "rules, rites, ceremonies and customs" of the Syrian Church of which Father Saurez is an ordained minister. Father Saurez apparently had the approval of his own ecclesiastical superiors. The prosecution was instituted by a Priest of a rival church. In my opinion the District Magistrate was justified in refusing to proceed with the prosecution.

I would dismiss the petition.

APPELLATE CIVIL.

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

SOMASUNDARA MUDALIAR, PETITIONER,

1896. March 9.

v.

VYTHILINGA MUDALIAR AND ANOTHER, RESPONDENTS.*

Religious Endowments Act—Act XX of 1863, s. 5.

Where a hereditary trustee of a temple died and application was made by the Collector as Agent of the Court of Wards, in whom the management of deceased's estates, during the minority of the sons of the deceased, had vested, to be appointed trustee on behalf of the said sons:

Held, that the case fell within s. 5 of Act XX of 1863, and that the Court had jurisdiction to make the appointment.

PETITION under section 622 of the Code of Civil Procedure praying the High Court to revise the order of T. M. Horsfall, District Judge of Tanjore, passed on civil miscellaneous petition No. 639 of 1895.

---

* Civil Revision Petition No. 34 of 1896.

SOMASUNDARA MUDALIAR v. VYTHILINGA MUDALIAR.

The facts of this case are as follows:—

The three petitioners represented by the Acting Collector of Tanjore as Agent to the Court of Wards presented a petition under section 5 * of Act XX of 1863 (the Religious Endowments Act) setting forth that one Bava Chokkappa Mudaliar together with Bava Krishnasami Mudaliar and Somasundara Mudaliar were trustees of the Sri Tyagarajaswami temple at Tiruvalur, that Bava Chokkappa Mudaliar was a hereditary trustee until his death in April 1894, leaving three minor sons, the petitioners, that the Collector and Agent to the Court of Wards, who is now in charge of the estate of the petitioners, is entitled to the management of the temple as hereditary trustee on behalf of the said minors and is willing to accept the management on their behalf and praying that the Collector may be appointed trustee of the temple on behalf of the minor sons of deceased. This petition was opposed by Somasundara Mudaliar, one of the trustees, stating that the Court had no jurisdiction under section 5 of Act XX of 1863 to pass the order prayed for and alleging that the deceased was not a hereditary trustee and that his appointment was only personal. The District Judge granted the petition as prayed.

Somasundara Mudeliar filed the present petition.

Ramasubba Ayyar for respondents took the preliminary objection that an appeal lay from the order of the District Judge and therefore this petition must be dismissed, citing *Sultan Ackeni Sahib* v. *Shaik Bava Malimiyar*(1), but the Court overruled the objection.

Bhashyam Ayyangar, *Krishnasami Ayyar* and *Desikachariar* for petitioner.

Ramasubba Ayyar for respondents.

---

* 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 preceding 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 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.

(1) I.L.R., 4 Mad., 295.

JUDGMENT.—Mr. Ramasubba Ayyar for the counter-petitioners in this Court raises the preliminary objection that an order under section 5, Act XX of 1863, is appealable, and that an application for revision under section 622, Civil Procedure Code, is therefore inadmissible. He relies on *Sultan Ackai Sahib* v. *Shaik Bava Malimiyar*(1); but we are of opinion that this case is, in effect, overruled by the decision of the Privy Council in *Minakshi* v. *Subramanya*(2). That decision was, no doubt, given with reference to an order made under section 10 of Act XX of 1863. But we think that the principle on which that decision was based, is also applicable to an order like the present made under section 5 of Act XX of 1863.

We are therefore of opinion that no appeal lies.

We have now to consider whether we should interfere under section 622, Civil Procedure Code.

The petitioner in this court contends that the District Judge had no jurisdiction to pass an order under section 5, Act XX of 1863, on the ground that no dispute respecting the right of succession to the trusteeship had arisen, and that the office was not hereditary and that there could, therefore, be no "right of succession." The record does not show clearly what is the constitution of the trust, but the counter-petitioner, in his petition to the lower Court, claimed the office as hereditary trustee, and his claim was opposed by the petitioner. We think that this constituted a dispute respecting the right of succession to the office, and it is admitted that the institution is one falling under section 4 of the Act. The District Judge, therefore, had jurisdiction to make the appointment. It has also been suggested that, as two trustees still remain, there is not such a vacancy as is contemplated by section 5. We, however, are of opinion that as there were three trustees for many years prior to the death of the counter-petitioner's father in 1894, a vacancy such as is contemplated by the section arose when that death occurred.

It is also argued that the Judge acted with material irregularity in not having held an enquiry as to whether the office was of an hereditary character or not. Looking at the fact that the counter-petitioner's father and grandfather before him held the office of trustee, and that the Judge's proceeding was of a summary

(1) I.L.R., 4 Mad., 295. (2) I.L.R., 11 Mad., 26.

SOMASUNDARA MUDALIAR v. VYTHILINGA MUDALIAR.

character, intended merely to provide for the vacancy, pending the decision by regular suit of the right of succession, we are unable to hold that the enquiry was defective or that our interference under section 622, Civil Procedure Code, is necessary.

The petition fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Aiyar.

1896. April 10.

UPPALAKANDI KUNHI KUTTI ALI HAJI (DEFENDANT), APPELLANT,

v.

KUNNAM MITHAL KOTTAPRATH ABDUL RAHIMAN (PLAINTIFF), RESPONDENT.*

Suit on a Kanom—Registration Act III of 1877, *s.* 17, *cl.* (*n*).

Although under the Registration Act III of 1877, s. 17, cl. (*n*) a receipt given by a mortgagee purporting to extinguish the mortgage debt does require registration:

Held, that the language of the receipt in the present case did not indicate any intention to extinguish or limit the mortgagor's interest and that therefore registration was unnecessary.

SECOND APPEAL against the decree of A. Thompson, District Judge of North Malabar, in appeal suit No. 259, of 1894, modifying the decree of B. Cammaran Nayar, District Munsif of Tellicherry, in original suit No. 381 of 1893.

Suit to redeem a kanom granted by plaintiff's assignor to the defendant's Karanavan in September 1877 for Rs. 600. The principal point in dispute was whether a sum of Rs. 500 had been paid in July, August 1890 by the plaintiff to the defendant. The Munsif found that this sum had not been paid and that a receipt for Rs. 500 (exhibit A) was a forgery and he decreed that the kanom be extinguished on payment by plaintiff of Rs. 600 together with costs of suit. The District Judge *reversed* the decree of the Munsif finding that the sum of Rs. 500 had been paid, that the receipt (exhibit A) was genuine, and ordered that the kanom be redeemed

* Second Appeal No. 298 of 1895.

on payment of Rs. 100. Defendant to pay plaintiff's costs in both Courts.

The receipt (exhibit A) was as follows :—

" Receipt granted by Uppalakandy Kunhi Kutti Ali to Kotta-
" purathu Pokkar, Karanavan, on behalf of Kottupurathu Antha-
" ruman.

" Out of the amount due to me by Antharuman, under the " decree in original suit No. 354 of 1887 in the Court of the Dis-
" trict Munsif of Tellicherry, you have already paid me Rs. 400
" through my paternal uncle Puthenpurayil Kunhi Kutti Ali, and
" have returned to me two subsidiary deeds on Kunnammethal
" paramba. Deducting this sum of Rs. 400, the remaining sum due
" to me according to the decision of arbitrators is Rs. 200, of
" which you Pokkar, have paid to me this day Rs. 100, and you
" shall pay me the remaining sum of Rs. 100 within one month
" from this date and shall obtain back the said two documents.
" On receipt of this sum of Rs. 100, I shall submit a petition to
" the Court, stating that the matter of the decree has been adjusted.
" I affix my signature to this in presence of witnesses."

Mr. *K. Brown* and Mr. *C. Krishnan* for appellant.

Exhibit A acknowledges receipt of consideration in partial extention or limitation of the mortgage interest on immovable property of over Rs. 100 in value. It should have been registered and not being so it is inadmissible in evidence (section 17 and 49, Registration Act). There is no other evidence to prove payment of Rs. 500 of the mortgage money. Exhibit A is not a mere acknowledgement of payment of a debt. But it acknowledges receipt of a consideration as the person who gives it has to return two documents and put in a petition, see *Venkayyar* v. *Subbayyar*(1) and *Venkatarama Naik* v. *Chinnathambu Reddi*(2). Clause (*n*), section, 17, added by Act VII of 1886 shows exhibit A required to be registered as it extinguishes the mortgage *pro tanto*. It evidences part-payment of the *mortgage money* and releases the claim on the property secured by the mortgage to that extent, see *Basawa* v. *Kalkapa Sharbana*(3) and *Jiwan Ali Beg* v. *Basamal*(4). Exhibit A specially refers to the mortgage debt which formed the subject of original suit No. 34 of 1887.

---

(1) I.L.R., 3 Mad., 53.
(2) 7 M.H.C.R., 1.
(3) I.L.R., 2 Bom., 489.
(4) I.L.R., 9 All., 108.

UPPALAKANDI KUNHI KUTTI ALI HAJI v. KUNNAM MITHAL KOTTAPRATH ABDUL RAHIMAN.

Sankaran Nayar and *Ryru Nambiar* for respondent.

JUDGMENT.—The only question is whether the receipt required registration under clause (*n*) of section 17 of the Registration Act.

It may be doubted whether in view of the decision of this Court in *Venkatarama Naik* v. *Chinnathambu Reddi*(1) and *Venkayyar* v. *Subbayyar*(2) the money received in discharge of a mortgage can be deemed to be a consideration within the meaning of the clause. Since those decisions, however, the law has been amended, a clause is now added (clause *n*) which, as it might be argued, indicates that receipts given by a mortgagee purporting to extinguish the mortgage do require registration. In the present case, assuming that this is the effect of the amendment, we do not think that the language of the receipt indicates any intention to extinguish or limit the mortgagor's interest. The instrument, therefore, did not require registration. We must dismiss the appeal with costs.

The memorandum of objection is also dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

1896. March 7.

KRISHNA PANDA AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

BALARAM PANDA (DEFENDANT), RESPONDENT.*

Suit for partition—Prior arbitration and award, effect of.

Disputes having arisen in a joint Hindu family, the parties submitted the question of partition to arbitrators, who passed an award thereon. Both parties objected to the award, and it was never carried into effect. On a suit for partition being filed:

Held, that such an award is equivalent to a final judgment and binding on the parties in the absence of positive evidence that both parties agreed that the former state of things should be restored and that therefore the present suit for partition could not be maintained.

APPEAL against the decree of J. P. Fiddian, District Judge of Ganjám, in original suit No. 2 of 1894.

---

(1) 7 M.H.R., 1. (2) I.L.R., 3 Mad., 53. * Appeal No. 123 of 1895.