he cases in which this was done were referred to by the learned Pleader for the second respondent."]

VIDYAPURNA TIRTHA SWAMI v. VIDYANIDHI TIRTHA SWAMI.

Second Appeal No. 388 *of* 1902.—The judgment, which was dated 22nd December 1903, was delivered by Benson and Bhashyam Ayyangar, JJ., as follows:—The inam appears to have been granted originally for the support of a spiritual office in the village, the right to appoint to the office being vested in the Brahman community of the village. At the time when the inam title-deed was issued, in 1865, the holder of the office was Rama Sastri, in whose name the title-deed was issued. But it is clear from the inam statement (exhibit H) of Rama Sastri that he did not claim the inam as his hereditary personal inam, but only as the then incumbent of the office. It is found that the first plaintiff is now the *de facto* and *de jure* holder of the office. The inam title-deed, no doubt, in terms declares that the inam is the absolute property of Rama Sastri which he may sell or dispose of as he thinks proper, but this must be construed as intended to operate only as between Rama Sastri and the Government, which could have resumed it under Regulation XXV of 1802. The inam title-deed, therefore, cannot confer on the first defendant anytitle or right which Rama Sastri had not got under the original grant.

The alienation to the second defendant by the first defendant (the son of Rama Sastri) is therefore void and the plaintiffs are entitled to a declaration that the first plaintiff, as the present holder of the office, is entitled to hold and enjoy the office, with its emoluments, viz., the inam and cash allowances so long as he is the holder of the office.

We vary the decree accordingly, but as the appellant has substantially failed he must pay the costs of this appeal.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar and Mr. Justice Russell.

1903. November 26 December 7.

NALLAYAPPA PILLIAN AND OTHERS (DEFENDANTS), APPELLANTS,

v.

AMBALAVANA PANDARA SANNADHI (PLAINTIFF), RESPONDENT.*

Rent Recovery Act—VIII of 1865, *s.* 12,—*Right of tenants to relinquish their lands at end of year—"Tenants"—Rights of permanent lessees of melvaram rights of Zamindar—Religious institutions—Alienability of endowments.*

By the proviso to section 12 of the Rent Recovery Act, tenants have the right to relinquish their lands at the end of a revenue year. The defendants, by a

* Second Appeal No. 167 of 1902, presented against the decree of S. Dorasawmi Ayyangar, Subordinate Judge of Tinnevelly, in Appeal Suit No. 205 of 1900, presented against the decree of A. Ramalingam Pillai, District Munsif of Ambasamudram, in Original Suit No. 125 of 1899.

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registered deed, became permanent lessees of the melvaram rights of the plaintiff, who was a Zamindar. On the question whether the defendants were entitled to relinquish their interest under the deed, under section 12 of the Rent Recovery Act:

Held, that the proviso to that section was not intended to apply to persons in the position of the defendants. Though the defendants were the "tenants" of the plaintiff in the sense that they were bound to pay rent to the plaintiff, yet they were not tenants in the sense in which that term is used in section 12. The defendants, being lessees of the melvaram, were farmers under an inamdar, and belonged to the class of landholders specified in section 3 of the Act. Sections 3 to 12 inclusive refer to the relations between these landholders and their tenants, and, for the purposes of section 12, the defendants were in the position, not of tenants but of landlords.

Lakshminarayana Pantulu v. *Venkatarayanam*, (I.L.R., 21 Mad., 116), and *Ramasami* v. *Bhaskarasami*, (I.L.R., 2 Mad., 67), followed.

Subbaraya v. *Srinivasa*, (I.L.R., 7 Mad., 580); *Appasami* v. *Ramasubba*, (I.L.R., 7 Mad., 262); *Ramachandra* v. *Narayanasami*, (I.L.R., 10 Mad., 229); *Bashkarasami* v. *Sivasami*, (I.L.R., 8 Mad., 196) (so far as they proceed on the supposition that the word "tenant," as defined in section 1 of the Rent Recovery Act, is applicable to an intermediate landholder who has to pay rent to a superior landholder), dissented from.

Per the Offg. C.J. and RUSSELL, J. (after the decision of the Full Bench).—According to the Indian Common Law relating to Hindu religious institutions of the kind before the Court the landed endowments thereof are inalienable. Though proper derivative tenures conformable to custom may be created with reference to such endowments they cannot be transferred by way of permanent lease at a fixed rent, nor can they be sold or mortgaged. The revenues thereof may alone be pledged for the necessities of the institutions. *Prosanna Kumari Debya* v. *Golab Chand Baboo*, (L.R., 2 I.A., 145), referred to.

SUIT for rent. Exhibit A, which is described in the Order of Reference to a Full Bench as a permanent lease of the plaintiff's melvaram right to the defendants, was dated 27th January 1886, and contained the following provisions:—

"While we were up to fasli 1294 last paying in the shape of paddy and of money the half share fixed by custom to the Ayan Mitta Zamin in respect of the cultivated lands in the Ardhamanyam village of Avudayapuram mentioned in the schedule hereto annexed and relating to our Kattalai in the said Zamin belonging to the said Adhinam, inconveniences were felt by both parties by reason of there being varam and tirvai between the Zamin and us. In consideration of which fact, it has been thought advisable that a Kattuguthagai (a lease for a number of years together) should be agreed upon; and the particulars of the determination come to (in this matter) are as follow:—We and our heirs shall from the current fasli 1205 perpetually and for

ever enjoy the nanjai, punjai, garden, tank-bank, puramboke nattam (hamlet), sithadi and all other lands according to the total ayacut (area) of the said village of Avudayapuram mentioned in the schedule, together with the wells situated therein, all kinds of trees assessed or unassessed, and the tank fishery and all other properties, whether the lands are cultivated or left waste, even when act of State or act of God occurs (in respect of them), and whether the crops wither away or whether the kernel of the corn develops well, and on account of the half alone due to the said Zamin, we shall pay to the said Adhinam Guthagai (lease) amount at the rate of Rs. 350 a year, in 7 equal kists (instalments) from November to May of every fasli year irrespective of Kattu and Muchilika and obtain receipts (for such payments). If we fail thus to pay (the said amount) you will, according to the custom of the said Zamin, recover the kist which we fail to pay together with interest at the rate of 1 per cent. per month. No kind of maramat in the said village concerns the said Zamin. You will have no right to demand from us, on behalf of the Zamin, on any account, an amount greater than the said Kattuguthagai amount of Rs. 350, except the Circar levies. In case Government at any time makes repairs, etc., in Pappankal, and a total tax has to be collected in your Mitta including this village and paid, then we shall pay to you the rateable proportion due from the lands in this village."

The plaint recited that plaintiff was the mittadar of Kambaneri Puthukudi and that the defendants were Kalasandhi Kattalai (morning service) Hakdars of Sree Sankaranarayana Swami temple; that the produce of the village of Avudayapuram had formerly been divided between the plaintiff and the Kattalai, but that a fixed permanent money rent had been agreed upon by the registered perpetual agreement, exhibit A, under which rent was paid till the fasli 1305, when the defendants gave notice to the plaintiff's agents that they declined to be bound by the said agreement. Plaintiff claimed that defendants were bound by the agreement, and prayed for a decree for the rent due under it. The defendants alleged that they had relinquished the lands and maintained their right to do so, and denied their liability to pay rent subsequent to the date of relinquishment. The District Munsif held that the defendants had not in fact relinquished the lands, though he considered that they were entitled to do so under

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section 12 of the Rent Recovery Act. He was of opinion that the agreement was prejudicial to the Kattalai of which the defendants were the trustees, and that the defendants were bound to pay only one half of the rent actually collected by them but that as they had failed to prove how much they had collected in certain faslis they were bound to pay the full amount claimed. He gave a decree accordingly.

The Subordinate Judge, on appeal, said: "The defendants' objection that as the tenancy has been relinquished under the provision of section 12 of the Rent Recovery Act the plaintiff is not entitled to claim rent, cannot prevail. This section does not authorise the relinquishment of a permanent tenancy, which is created by contract entered into between the parties and applies only to cases not governed by any special contract but by the general law relating to landlord and tenant. Nor can the objection that the defendants are not bound to pay more than a moiety of what they succeed in collecting, as that was the understanding between the parties at the time of the lease, prevail, for this is against the terms of the lease, which are embodied in a registered document. The evidence shows that as some tenants did not pay, their holdings were brought to sale and purchased by the defendants, and there is nothing unfair in the defendants who have thus become entitled to the lands being made to bear the burden. Towards the close of fasli 1306 the notice IX was sent by the managers of the Kattalai to the plaintiff intimating that they did not want for fasli 1307 the lands which they became entitled to in various ways from the tenants with permanent occupancy right and relinquished their right, so far as the plaintiff's half share was concerned. It is doubtful whether this means an absolute relinquishment of the tenancy right, and the relinquishment does not also appear to have been given effect to. If the holdings are relinquished and, if owing to any altered circumstances the original lease ought not to be allowed to stand, the defendants must get it cancelled in due course, if they can, and are not entitled to refuse payment of rent to the plaintiff so long as the same remains uncancelled. The decree of the District Munsif must therefore stand, though on different grounds from those on which he bases his judgment."

He dismissed the appeal.

Defendants preferred this second appeal.

P. R. Sundara Ayyar for appellants.

V. Krishnaswami Ayyar for respondent.

The case came in the first instance before Sir S. Subrahmania Ayyar, Offg. C.J., and Russell, J., who made the following

ORDER OF REFERENCE.—According to exhibits A and II the arrangement between the parties is a permanent lease of the plaintiff's melvaram right to the defendants. One of the questions raised in the case is whether the defendants are tenants entitled to relinquish under the proviso to section 12 of Madras Act VIII of 1865. There is a conflict on this point between the decisions in *Subbaraya* v. *Srinivasa*(1) and *Krishna* v. *Lakshminaranoppa*(2). In the former a lessee in the position of the present defendants was held to come within the provisions of section 12 of the Act. In *Krishna* v. *Lakshminaranappa*(2) a mulgeni tenant was held not entitled to relinquish, one of the grounds being that section 12 did not apply to the case of such a tenant. Owing to the conflict we consider it necessary to refer for the decision of a Full Bench the following question:—

Are the defendants entitled to relinquish under section 12 of Act VIII of 1865 their interest under exhibit A?

The case came on for hearing in due course before the Full Bench constituted as above.

P. R. Sundara Ayyar for appellants.

V. Krishnaswami Ayyar for respondent.

The Court expressed the following

OPINION.—The reference states that the defendants are permanent lessees of the melvaram rights of the plaintiff who is a Zamindar. Although the defendants are the "tenants" of the plaintiff in the sense that they are bound to pay rent to the plaintiff, yet the defendants are obviously, we think, not tenants in the sense in which that word is used in section 12 of the Act. The defendants being lessees of the melvaram are farmers under an Inamdar and belong to the class of landholders specified in section 3 of the Act. Sections 3 to 12 inclusive refer to the relations between these landholders and their tenants. For the purposes of section 12, the defendants are not in the position of tenants, but of landlords. The proviso in section 12 embodies

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(1) I.L.R., 7 Mad., 580. (2) I.L.R., 15 Mad., 67.

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the common law rule with regard to tenants (ryots) holding under the landholders named in section 3, but was not intended to apply to persons who like the defendants are landholders though bound themselves to pay rent to a superior landlord for a term of years or in perpetuity under a lease.

This decision is in accordance with the views of the Full Bench in *Lakshminarayana Pantulu* v. *Venkatrayanam*(1) and of the Privy Council in *Ramasami* v. *Bhaskarasami*(2).

We think that the view taken in *Subbaraya* v. *Srinivasa*(3) relating to the reinstatement of an intermediate landholder who was ejected by a superior landholder and the decisions in *Appasami* v. *Ramasubba*(4) and *Ramachandra* v. *Narayanasami*(5) relating to distraints by a superior landholder for recovery of rent due by an intermediate landholder, and also the decision in *Bashkarasami* v. *Sivasami*(6) relating to a sale by a superior landholder for sale of the tenure of an intermediate landholder, so far as they proceed on the supposition that the word "tenant" as defined in section 1 of the Act is applicable to an intermediate landholder who has to pay rent to a superior landholder, are erroneous.

The second appeal came on for final hearing before Sir S. Subrahmania Ayyar, Offg. C.J., and Russell, J., after the expression of opinion of the Full Bench, when their Lordships delivered the following

JUDGMENTS:—Sir S. SUBRAHMANIA AYYAR, OFFG. C.J.—The plaintiff in this case is the Pandarasannadhi of Tiruvaduthorai Mutt in the Tanjore district having a branch establishment and endowments in the Tinnevelly district. The defendants are the present managers of the Kalasandhi Kattalai or the foundation for morning service in the temple of Sree Sankaranarayana Swami in Sankaranayinarkoyil taluk in the Tinnevelly district. The village of Avudayapuram, an inam village in the latter district, is held as an endowment in equal moieties by the mutt and the Kattalai respectively. From what is before us it must be taken that the lands of the village are in the possession of the ryots entitled to hold them permanently, subject to the payment of rent to the mutt and the Kattalai. Up to fasli 1291, the ryots appear to have paid

(1) I.L.R., 21 Mad., 116.
(2) I.L.R., 2 Mad., 67.
(3) I.L.R., 7 Mad., 580.
(4) I.L.R., 7 Mad., 262.
(5) I.L.R., 10 Mad., 229.
(6) I.L.R., 8 Mad., 196.

only on account of lands actually cultivated, the payment in respect of wet lands consisting of a share of the produce of the lands cultivated. At this period it would seem the tenants paid the whole of the rent to the managers of the Kattalai who passed on a half of what they received to the head of the mutt. About fasli 1292, one Pannirugai Thambiran, who was an agent of the then head of the mutt, raised a question as to whether the managers of the Kattalai should not have collected from the ryots assessment in respect also of lands left by the ryots uncultivated according to *Sarasari* rates, *i.e.*, the average receipts from lands cultivated, and succeeded in obtaining a decision in his favour in a summary suit against the managers. That decision has not been produced and the ground thereof does not appear. But the materials on the record disclose absolutely nothing which would sustain what is said to have been established by that decision. Having regard, however, to that decision the managers of the Kattalai naturally desirous of saving themselves from further complications proposed to relinquish under the provisions of the Rent Recovery Act, section 12, the moiety of uncultivated lands in the village which would appertain to the mutt. The agent of the mutt in order to avoid the consequences of such a procedure on the part of the managers of the Kattalai, suggested a partition and this was carried out to the extent of preparing lists of what the mutt and the Kattalai were to take respectively and casting lots.

But for reasons not quite clear the partition arrangement does not appear to have been adhered to and the agent of the mutt induced the tenants to accept, in lieu of the system till then prevalent, the arrangement set forth in exhibit II, whereby a lump rent of Rs. 700 was made payable to the managers of the Kattalai in respect of the whole village and got the latter to agree to pay to the mutt for its share Rs. 350 per annum as specified in exhibit A, dated 27th January 1886.

The ryots having subsequently failed to make payments duly according to the terms of exhibit II to the managers of the Kattalai these intimated to the head of the mutt that they were not bound to and could not continue to make the payment as provided in exhibit A. They, further, on the footing that the relation which exhibit A purported to create between the mutt and the Kattalai was that of the landlord and tenant to which the provisions of section 12 of the Rent Recovery Act were applicable

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relinquished to the mutt the Kattalai's supposed interest in respect of the mutt's moiety of the village. The head of the mutt, demurring to the validity of such action on the part of the managers, brought this suit for the money claimed to be payable under the provisions of exhibit A in respect of faslis 1306, 1307 and 1308.

The District Munsif held that exhibit A was not binding on the Kattalai, but nevertheless decreed the claim on the ground that the managers of the Kattalai failed to show how much they actually collected on account of rents payable by the ryots for those faslis. The Subordinate Judge, on appeal, upheld the decree, being of opinion that exhibit A was binding on the Kattalai.

The important question for our determination is whether this opinion of the Subordinate Judge is sound.

The law as to the powers and duties of persons in the position of managers of the Kattalai admits of no doubt. According to the Indian Common law relating to Hindu religious institutions such as the present, the landed endowments thereof are inalienable. Though proper derivative tenures conformable to custom may be created with reference to such endowments they cannot be transferred by way of permanent lease at a fixed rent, nor can they be sold or mortgaged. The revenues thereof may alone be pledged for the necessities of the institutions. *Maharance Shibessouree Debia* v. *Mothooranath Acharjo*(1); *Narayan* v. *Chintaman*(2) and *Collector of Thana* v. *Hari Sitaram*(3) are direct authorities in support of this statement of the law. Nor do I think that *Prosanna Kumari Debya* v. *Golab Chand Baboo*(4) is to be understood as recognising any wider powers in the managers of such institutions. The Bombay cases just referred to apparently adopt the same interpretation of that decision of the Judicial Committee and the propriety of that construction is confirmed by the fact that the committee itself hold that decrees obtained against shebaits in respect of debts incurred for necessary purposes can be executed only against the current rents and profits.

If that decision of the Privy Council were to be understood as going further and recognising, in cases of absolute necessity, the validity of even a sale or a mortgage of the corpus, such a rule

(1) 13 M.I.A., 270.
(2) I.L.R., 5 Bom., 393.
(3) I.L.R., 6 Bom., 546 at p. 552.
(4) L.R., 2 I.A., 145.

would have to be treated as providing for a case which can but rarely, if ever, happen.

For in the first place among temples possessing landed endowments, I believe there are scarcely any the expenses of whose customary services cannot be fully met from the income of the endowments. Even in cases where, owing to causes beyond the control of the managers, such as famine, etc., the income falls off, the *uniform and approved practice* of the country has been to regulate the scale of the services with reference to the diminished income until the income returns to its normal condition, and not to keep up the services on a scale rendering the incurring of debts necessary. Nor is money ever *borrowed*, even for the purpose of repairs. One reason why a manager never thinks of mortgaging or setting the corpus for such a purpose is that he will ordinarily not be able to find a mortgagee or purchaser among the members of the community since the principle that property dedicated to God ought never to be diverted for other purposes operates so strongly on the mind of the community that even innocent participation in such diversion is understood to be sinful and to forbode evil to the participator.

Another reason is that landed endowments are almost invariably granted for some specific service and a transfer thereof in order to raise money for repairs, etc., would be unauthorized. It does not follow however that any real difficulty is felt with reference to the matter under consideration inasmuch as when more funds than the temple can afford out of its revenues are wanted for making repairs, the almost invariable course is an appeal to the pious for subscriptions, which scarcely ever fail to come in. The truth of this observation cannot be better exemplified than by a reference to the many and costly renovations of temples big and small even now effected by the charity of the trading and money-lending classes of the country, a fact which itself attests the still continuing potency of the injunctions of the old Hindu law givers that the special dharma of the Vaisya or the wealth making class is to provide for these and like charities. Nor should it be forgotten that, as shown by the formula with which grants and donations to charities usually conclude, the people take that to renovate is even more meritorious than to found. In such circumstances it is obvious that the manager's powers are quite limited. He can only do what is necessary for the services of the

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idol in a manner commensurate with its endowments and he need only preserve and duly manage what property may belong thereto. It is no part of his duty to effect improvements with reference to existing endowments when the funds in his hands do not admit of it, nor is he called upon to enter into transactions for the purpose of augmenting the funds of the institution. He cannot in any manner subject the institution in his charge to duties, obligations and burdens to which, with reference to the nature of the foundation or otherwise, the institution is not inherently or necessarily subject.

This being so, we have now to see, if the Kattalai was bound by the transaction evidenced by exhibits A and I, which in truth is a lease of the mutt's moiety of the village to the Kattalai. If the answer to this question is to be in the affirmative, that must be on the ground that the manager of a temple has the power to place the institution of which he is the representative in the position of a farmer of properties of others. Farming operations, to be successful, require capital, personal attention and skill and favourable seasons. Of course a manager cannot be called upon to provide the money or pay the attention needed. Skill he may possess none and the seasons he cannot control. How then can he be allowed to involve the institution in the risks and liabilities incident to such undertakings? Mr. Krishnaswami Ayyar, on behalf of the plaintiff, without going the length of saying that the managers of the Kattalai could, under ordinary circumstances, have lawfully taken a lease on behalf of the Kattalai, urged that the transaction in question ought to be held to have been within their competency having regard to the special circumstances of the case. It was said, so far as I followed the argument, that the mutt and the Kattalai, as owners of undivided moieties, having to deal with a number of ryots with reference to the collection of the rents, occupied a position attended with difficulties and that the arrangement in question must be looked on not so much as a lease of an outsider's property, as a transaction mainly intended to vest the power to collect rents in one of the two co-owners with a view to obviate those difficulties. No doubt the position of the two institutions with reference to dealings with the ryots in connection with the preliminaries to be adopted under the Rent Law was one attended with trouble and expense, but that surely would not warrant the managers in shifting the whole burden on the Kattalai

so as to constitute it the bailiff and agent in respect of the mutt's share of the rents, with the responsibilities incident to such a position.

Now though, having regard to the peculiar requirements of the Rent Law governing the action of landholders such as the mutt and the Kattalai, they were each bound to co-operate with the other in all necessary proceedings to be taken under the law for realization of the rents, it is clear that there was no further obligation *inter se* arising out of their tenancy in common. As held by the House of Lords in *Kennedy* v. *De Trafford*(1) there is no relationship of trust or agency in one co-owner of property towards the other, and when one collects the rents of the whole, he does so not in the capacity of agent but in that of owner, and, as held in *Henderson* v. *Eason*(2), is answerable to his co-tenant only if he receives more than comes to his just share and to the extent of the excess alone. Therefore even a mere undertaking by the managers of the Kattalai to make all the collections and to account for the mutt's share thereof so long as the parties were willing to follow such course would not bind the Kattalai, since thereby a duty would be imposed on it to which it was not, as a tenant in common, subject.

The present arrangement is infinitely more onerous. Though exhibit II was executed in March 1886, while exhibits A and I were executed in January of that year, it is clear and not denied that the very basis of exhibits A and I was the transaction evidenced by exhibit II. Indeed the case for the plaintiff is that it was Pannirukai Thambiran referred to above that brought about the whole arrangement, viz., on the one hand that between the ryots of the village and the Kattalai evidenced by exhibit II, and on the other, that between the Kattalai and the mutt evidenced by exhibits A and I. It was in respect of a moiety of the Rs. 700 expected to be received by the Kattalai from the ryots as regards the whole village, that the Kattalai was to be liable for to the mutt for all time to come, and whether the Kattalai in fact collected anything or not. Though anterior to exhibit II each ryot was severally responsible only for the rent of his actual holding, yet under it they were, as a body, made jointly liable for Rs. 700 nett assessed on the whole village, an amount which was more than the

(1) L.R., [1897]. A.C., 180. (2) L.R., 17 Q.B.D., 701.

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highest revenue ever before derived by the mutt and the Kattalai together from the village and which was made payable without reference to the extent of cultivation or adverse seasons. All future demands by Government, together with disbursements ordinarily borne by landlord, *e.g.*, the latter's share of the road cess, the cost of maintaining and repairing the irrigation works, etc., were thrown on the ryots. Even the power of relinquishment given to them by the law was curtailed, it being provided that they should not relinquish unless they did so with reference to their entire holding as constituted by exhibit II, *i.e.*, the village itself; in other words if any one of them wished to relinquish his particular lands, the other ryots must take them up or in effect quit the village in a body.

It is not a little surprising that the author of the arrangement come to by the execution of these singular instruments exhibits II-A and I should have persuaded himself and have succeeded in persuading the others concerned that the solution of the difficulties incident to the comparatively simple relation of the tenancy in common which subsisted between the mutt and the Kattalai was to be found in the creation of the immensely more complicated joint relation brought about among the whole body of ryots who, by their very position and circumstances, are presumably unfit for united action and co-operation of the kind contemplated. Such an arrangement was on the very face of it quite unworkable for any considerable time and bound to break down, as it did. Moreover, with reference to the very important matter of relinquishment of holdings wisely provided for by the statute law, the arrangement was essentially unjust to the peasantry who were thus tied up to each other hopelessly. No plan more calculated to sow dissension among the tenantry and demoralise them altogether could well have been devised. To have made the Kattalai the other party to such an arrangement was to involve that institution in certain dispute and contention, litigation and loss, and to have gone further and attempted to fasten on the Kattalai a liability for ever to pay to the mutt the fixed amount of Rs. 350 which was more than any amount which the mutt had at any time before realized on account of its interest in the village, was simply to compass the destruction of the Kattalai as an institution.

It is impossible therefore to hold that the transaction in question was such as the managers were competent to enter into

on behalf of that foundation. The opinion of the Subordinate Judge as to the validity of the transaction is therefore clearly erroneous and the decree as resting on that opinion cannot be upheld. Nor can the decree be sustained on the ground assigned by the District Munsif, for not only was the Kattalai as one of the two tenants in common, not bound to pay over to the mutt a moiety of what it received from the ryots so long as such receipts did not exceed its proper share, but in an action against the Kattalai to account for its receipts over and above what it was entitled to, it was for the mutt distinctly to allege and show that the Kattalai's receipts did in fact exceed its due share (*Sturton* v. *Richardson*(1)), see also *Purcell* v. *Harding*(2). No averment of that kind having been made, and no proof in support of it having been offered the suit necessarily failed except in regard to the sum of Rs. 43-4-8 admitted by the defendants to be due.

I would accordingly modify the decree by reducing the amount payable to that sum and otherwise dismiss the suit with costs throughout.

RUSSELL, J.—I concur.

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(1) 13 M. & W., 17.

(2) 15 W.R., 128, Ir.