THE CLAN LINE STEAMERS v. 'THE BALCES.'

that damage was caused either to the steamship 'Clan Lamont' or to her engines by the undue strain put upon her in towing the boat. Considering the relative dimensions of the boats, it is scarcely possible that there could have been any such strain. I think it must be admitted that these valuations are excessive. As already stated the defendant offered Rs. 500. At the close of the argument Mr. Napier on his behalf stated that the defendant was willing to give Rs. 1,000. I find the first and second issues in the affirmative and on a careful consideration of all the evidence that has been given and the arguments of Counsel on both sides, I decide on the third issue that an award of Rs. 2,000 will be reasonable compensation for the salvage services rendered.

I accordingly pass a decree for that amount with costs including the costs of the commission. The balance in Court to the credit of the suit to be paid to the owner of the defendant barque 'Balces,' Muhamad Saib Maraccir.

Messrs. *King & Josselyn*, attorneys, for plaintiffs.

Mr. *James Short*, attorney, for defendant.

APPELLATE CIVIL.

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

1903. August 3, 4, 12.

RAMANATHAN CHETTY (DEFENDANT), APPELLANT,

v.

MURUGAPPA CHETTY (PLAINTIFF), RESPONDENT.*

Limitation Act—XV of 1877, s. 28, sched. II, arts. 124, 127, 142—Religious Endowment Act—Trustees of temple—Hereditary trustees—Management by rotation—Discontinuance of possession of trust properties of junior branch of trustees—Continuous possession by members of senior branch—Extinction of rights of junior branch in favour of senior branch.

On the death of the last sole trustee of a public religious institution, the trusteeship of which was hereditary in his family, without beneficial interest in the trust property or income, the office devolved by inheritance on his male descendants by his two wives. Until 1881, the management was conducted by

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* Appeal No. 121 of 1901 presented against the decree of T. Varada Rao, Subordinate Judge of Madura (East), in Original Suit No. 52 of 1900.

the two branches respectively in rotation, each acting for a year. Since 1882, the members of the junior branch had discontinued possession of the immoveable properties belonging to the trust as also performance of the duties usually appertaining to the office of trustee, and the members of the senior branch had been, in turns, successively in possession of the properties and had performed the duties, to the exclusion of and adversely to the members of the junior branch, and the High Court found that there had been an ouster of the members of the junior branch for about 19 years prior to the present suit, and that the members of the senior branch had been in turns successively in possession of the properties and had performed the duties of the office of trustee, to the exclusion of and adversely to the members of the junior branch. Plaintiff, a son of the last sole trustee by his senior wife, now sued a grandson of the last sole trustee, whose father was also a son by the senior wife, to enforce his turn of management of the institution. Since 1882, plaintiff had been managing, not only during the years of his own turn, but also during the years of the turns of the members of the junior branch, who, plaintiff alleged, had transferred their turns to him. It was contended for the defendant that inasmuch as the plaintiff had not himself been in continuous possession for 12 years, and the possession of the defendant and of the other two members of the senior branch during the 19 years had not been adverse to the members of the junior branch, the rights of the latter could not be barred under article 124:

Held, that the right of the members of the junior branch, as co-trustees, had been extinguished, whether the appropriate article be 127, 142 or 124. Each of the members of the senior branch must be deemed, in law to have held and discharged the duties of the office on behalf of himself and the other members of the senior branch, to the exclusion of the junior branch. Consequently, the office and the properties had been for more than 12 years held and possessed by the members of the senior branch as a whole body, adversely to the members of the junior branch, as a body, and the rights of the latter had been, by the operation of section 28 of the Limitation Act, extinguished, not in favour of the plaintiff individually but in favour of the members of the senior branch as a body. The defendant could not therefore plead, in bar of the plaintiff's claim, that the junior branch, or one of its members, and not the plaintiff, was entitled to succeed him in the turn of management.

A right to manage by rotation by each of several co-trustees in turn is not one that can, as between the trustees themselves, be acquired merely by the operation of the law of limitation. *But held*, that plaintiff was entitled to the relief sought for upon the basis of the scheme of management, under which management by rotation was provided for.

A scheme of management which has been framed and acted upon by the trustees cannot be revoked at the will and pleasure of any of them.

It is competent for co-trustees to settle a scheme of management by each of the co-trustees in rotation, at any rate where no emoluments are attached and the office is an hereditary one. Where emoluments are attached and the office is hereditary, the emoluments will be subject to partition, in the strict sense of the term, like any other *family property*. But whatever may be the number of co-trustees the office is a joint one and the co-trustees all form, as it were, but one collective trustee, and therefore must execute the duties of the office in their joint capacity.

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Management by members of undivided and divided families discussed.

It would be competent for a court in the exercise of its equitable jurisdiction, to settle a scheme for the management of a public religious or charitable trust by the various co-trustees in rotation.

Sri Raman Lalji Maharaj v. *Sri Gopal Lalji Maharaj*, (I.L.R., 19 All., 428), discussed.

SUIT by a co-trustee to enforce his turn of management of a temple and its endowments for three years.

The devasthanam in question was that of Agastheeswaraswami and Sundra Nayaki Amman, in Kottur village, in the Sivaganga zamindari. The last sole trustee had been Mayandi Chetti, grandfather of the plaintiff and great grandfather of the defendant. At his death, the office devolved by inheritance on his male descendants by his two wives, there being four descendants in each branch. Both plaintiff and defendant belonged to the senior branch. The facts out of which the present claim arose are fully set out in the judgment. The Subordinate Judge decreed in plaintiff's favour. Defendant preferred this appeal.

V. Krishnaswami Ayyar, *P. R. Sundara Ayyar* and *C. V. Anantakrishna Ayyar* for appellant.

The Advocate-General (Hon. Mr. *J. P. Wallis*), Mr. *M. A. Tirunarayana Chariar* and *P. S. Sivaswami Ayyar* for respondent.

JUDGMENT.—This is an appeal against the decree of the Subordinate Judge of Madura (East) in a suit which was brought by the respondent to enforce his turn of management of the plaint temple and its endowments for a period of three years commencing from the 15th July 1899.

It is admitted that the plaint temple (with its endowments) is a public religious institution, that the trusteeship thereof is hereditary in the family of the parties to the suit, but that the family has no beneficial interest in the property or income of the temple. Mayandi Chetti, the grand father of the respondent and the great grandfather of the appellant, was the last sole trustee, and on his death, the office devolved by inheritance on his male descendants by his two wives. Four of them were his grandsons or great grandsons through his first wife and the other four grandsons or great grandsons through the second (see paragraph 7 of the judgment of the Subordinate Judge). Under the notion, apparently, that Mayandi's property devolved in equal undivided moieties (1, Strange's 'Hindu Law,' page 205) upon the respective descendants by his two wives, the management of the temple was

until about 1881–82 conducted by these in rotation, each for one year.

We agree with the Subordinate Judge that the management was taken alternately by one member of each branch and not, as falsely asserted by the appellant, by the members of the senior branch consecutively for four years and then by the members of the junior branch likewise for four years. We also agree with the Subordinate Judge that since 1881–82 (in which year the management was in the hands of a member of the junior branch) the respondent has been managing the temple not only during the years of his own turn, but also during the years of the turns of the members of the junior branch. We are, however, unable to agree with the Subordinate Judge that the appellant, at the end (in July 1899) of the year of his turn, transferred possession of the villages to the respondent, that the respondent was thereafter dispossessed and that he is on that ground entitled to the decree sought for.

The respondent's claim is clearly stated in paragraphs 3 and 4 of the plaint. In paragraph 3 it is stated that it has been arranged that during every term of eight years of management the management was to be by the four members of the senior branch, the respondent having his turns in the second, fourth, fifth, sixth and eighth years, the appellant in the third year and the other two members in the first and seventh years, respectively. The appellant has thus had full opportunity to disprove this arrangement or establish why the same is not binding upon him or should be discontinued. In paragraph 4 of the plaint it is further stated that the four members of the junior branch (whose turns of management would come in the second, fourth, sixth and eighth years) transferred their turns to the respondent and that he has been enjoying the same for about nineteen years without any objection and with full right.

The appellant's pleader, in support of the appeal, chiefly urges (i) that the evidence adduced in proof of the transfer is legally inadmissible inasmuch as the alleged transfer was by an unstamped instrument (which is said to have been lost), (ii) that such transfer, even if proved, is invalid in law, (iii) that the right of the members of the junior branch as co-trustees has not been extinguished by the law of limitation, and (iv) that even if their right had been extinguished the respondent could not as against the

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appellant acquire a right under the law of limitation to the additional number of turns of management claimed by him.

If the respondent's title in the suit rested merely on the transfer made to him by the four members of the junior branch (who were co-trustees with him and the other members of the senior branch), it must be admitted that in the absence of the alleged instrument of transfer which was admittedly unstamped and unregistered other evidence in proof of such transfer is inadmissible. It therefore becomes unnecessary to consider and decide whether such relinquishment, if proved, can be relied upon by the respondent as the basis of his title, having regard to the ruling of the Privy Council in *Rajah Vurmah* v. *Ravi Varma*(1) and the decisions of this Court in *Kuppa* v. *Dorasami*(2), *Narayana* v. *Ranga*(3), *Alagappa Mudaliar* v. *Sivaramasundra Mudaliar*(4) and *Annasami Pillai* v. *Ramakrishna Mudaliar*(5).

On the question of limitation, we are clearly of opinion that the right of the members of the junior branch as co-trustees has been extinguished, whether the appropriate article applicable to the case be article 127 or 142 or, as contended by the appellant's pleader, article 124. The evidence establishes beyond all doubt that the members of the junior branch had since May 1882 discontinued possession of the immoveable properties belonging to the temple, as also performance of the duties usually appertaining to the office of trustee of the temple and that the members of the senior branch have been in turns successively in possession of the properties of the temple and performed the duties of the office of trustee, to the exclusion of and adversely to the members of the junior branch. Two of the members of the junior branch who, as witnesses, now support the appellant admit that an abortive attempt was made about eight years ago (about 1892) to regain possession of the office, and in fact falsely depose that they did regain possession for a short period of three months. Bearing in mind that the discontinuance of possession on the part of the members of the junior branch was in consequence of their having relinquished their rights in favour of the respondent (as is now clearly admitted by one of the members of the junior branch as the plaintiff's first witness and by the appellant himself in two former depositions

(1) I.L.R., 1 Mad., 235.
(2) I.L.R., 6 Mad., 76.
(3) I.L.R., 15 Mad., 183.
(4) I.L.R., 19 Mad., 211.
(5) I.L.R., 24 Mad., 219 at p. 230.

—see his exhibits QQ and RR), it is clear beyond all doubt that there has been an ouster of the members of the junior branch for about nineteen years prior to the suit.

The learned pleader for the appellant argues that inasmuch as the respondent has not himself been in continuous possession for twelve years, and the possession of the appellant and of the other two members of the senior branch during the above period of nineteen years was not adverse to the members of the junior branch, the rights of the latter could not be barred under article 124. This argument proceeds on a misapprehension that when trust property is managed in rotation by co-trustees the possession of the office by each during his turn is exclusive of or adverse to the other co-trustees. Though each of the co-trustees may during his turn in the rotation be regarded in a sense as the acting or executive trustee for the year (or period) (cf. *Attorney-General* v. *Holland*(1)), yet he holds the office and discharges the duties thereof on behalf of all the co-trustees and not on behalf of himself alone. In fact, as a general rule, even during the turn of each co-trustee, all the co-trustees are entitled, and, in fact, are bound to act jointly in matters other than the ordinary routine duties. The supposed relinquishment by the junior branch, in favour of the respondent whether the same be valid or not in law, was one that was made to the knowledge of the appellant (see exhibits QQ and RR) and the other members of the senior branch and was so acted upon since 1882, the respondent taking the turns of management of the junior branch also. Each of the members of the senior branch must under these circumstances be taken in law to have held and discharged the duties of the office, on behalf of himself and the other members of the senior branch to the exclusion of the junior branch. In this view, the office of trustee and the properties of the temple have been for more than twelve years held and possessed by the members of the senior branch, as a whole body, adversely to the members of the junior branch, as a body, and the rights of the latter have been, by the operation of section 28 of the Limitation Act, extinguished (*Alagirisami Naicker* v. *Sundareswara Ayyar*(2)) not in favour of the respondent individually but in favour of the members of the senior branch as a body. The appellant, therefore, cannot plead, in bar of the respondent's claim, that the junior

(1) 47 E.R., 476. (2) I.L.R., 21 Mad., 278.

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branch or rather one of its members and not the respondent is entitled to succeed him in the turn of management.

The only question that remains to be considered is whether the respondent can enforce as against the appellant his turns of management according to the rotation which has been in force since 1882. Having regard to the nature of the right of management by rotation by each of several co-trustees (as explained above) such right cannot, as between themselves, be acquired merely by the operation of the Law of Limitation (see *dictum* of the High Court of Bombay quoted on appeal with approval by the Privy Council in *Vinayak* v. *Gopal*(1)).

But, in our opinion, the respondent is clearly entitled to the relief sought for upon the basis of his title as disclosed in paragraph 3 of his plaint, and we cannot accede to the contention of the appellant that according to the true construction of the plaint, the respondent's cause of action is based only on the relinquishment made in his favour by the members of the junior branch and the validity thereof and that no relief should be given to him in this suit on the footing of the scheme of management set forth in paragraph 3 of the plaint. We are clearly of opinion that the decree appealed against should be upheld as the appellant has failed to show any valid ground for discontinuance or supersession of that scheme. No Court in the exercise of its equitable jurisdiction under section 539, Civil Procedure Code, or otherwise, will be disposed to revise and alter such scheme unless it is satisfied that in the interests of the institution and the more effective management of its affairs such revision is needed.

In paragraph 6 of his written statement the appellant admits that it was orginally arranged that each one of the co-trustees should manage the affairs of the temple for one year (in rotation) on his own behalf and as agent of the others but pleads in paragraph 7 that such arrangement is revocable at the instance of any of the trustees. This plea is clearly unsustainable and no authority has been cited in support of such proposition. A scheme of management which has been framed and acted upon by the trustees cannot be revoked at the will and pleasure of any of them. It is next urged that the practice which has been in force since 1882 cannot be regarded as a scheme consented to by the four

(1) I.L.R., 27 Bom., 353 at p. 357.

co-trustees of the senior branch. Such practice was certainly a deviation from the original arrangement (admitted by both parties) according to which the management has to be held in turns by all the eight members (in both the branches) and though there is no proof of any express agreement entered into between the four members of the senior branch to alter the original scheme of management yet according to the principle clearly enunciated by section 252 of the Indian Contract Act, such agreement and a consent thereto (between the members of the senior branch) must be implied from the uniform course of dealings and practice extending over a period of 19 years.

It may be that this revised scheme of management was the result of a *bonâ fide* belief on the part of all the members of both the branches, that the members of the junior branch had validly relinquished their rights in favour of the respondent and that he should therefore take their turns. Even if such relinquishment be not valid in law to vest by its own force in the respondent their turns of management that can be no ground for holding that a scheme of management which has been in force since such relinquishment can be revoked at the will and pleasure of any of the trustees. It may be added, that in no case has it ever been held that, where the office of trustee is hereditary in a family and one of the members, for no valuable consideration, renounces his right in favour of one or some of his co-trustees, with the knowledge and consent of the others, such relinquishment is illegal or invalid.

The contention that it is not competent for co-trustees to settle a scheme of management by each of the co-trustees in rotation, in cases at any rate in which no emoluments are attached to the hereditary offices of trustee, cannot be upheld. In the case of hereditary offices in this country the number of co-trustees is in the very nature of things liable to increase and the co-trustees may belong to various branches of the family. The office may or may not have emoluments attached thereto. In the former case the emoluments will be subject to partition in the strict sense of the term like any other family property. But whatever may be the number of co-trustees the office is a joint one and the co-trustees all form, as it were, but one collective trustee and therefore must execute the duties of the office in their joint capacity (Lewin on 'Trusts,' eighth edition, 258; Perry on 'Trusts,' paragraph 411), and so

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long as the duties of the office are thus discharged and one of them is not the managing member of the undivided family in which the office is hereditary each of them is entitled and bound to participate equally with the others in the management of the trust, though it may be that if the subject-matter of the trust had been ordinary partible property (and not trust property) the shares of the co-trustees who form the members of the family would be unequal. When by reason of the family becoming divided the eldest member ceases to be the managing member of the family it becomes highly inconvenient and also detrimental to the interests of the religious institution if one and all the members (as co-trustees) are to participate in the joint discharge of the duties of the office. Further, though the office is in its nature indivisible, yet, it being hereditary in the family, the family when it becomes divided regards each member of it as having the same share or degree of interest in the office as in other joint family property which is legally partible. Except in the few cases in which the hereditary office may be descendible only to a single heir, the usage and custom generally is that along with other properties the office also is divided in the sense that the office is agreed to be held and the duties thereof discharged in rotation by each member or branch of the family, the duration of their turns being in proportion to their shares in the family property. Such a scheme of management may proceed either on the footing that the co-trustees are to continue as undivided members *quoad* the trust property or on the footing of being divided members, as in the case of the rest of the family property. In either case as between themselves their position will be that of co-trustees though on the death of any of them the devolution of his interest in the office will vary according as the scheme of management has been settled on the one footing or the other. Even in cases in which recourse is had to a suit for the partition of the family property, the Courts give effect to the usage and custom above referred to, by providing in the decree for management of religious and charitable institutions by different members or branches of the family in rotation on the above principle (see Mayne's 'Hindu Law,' sixth edition, paragraphs 439 and 468, 2; Morley's 'Digest,' 146; see also *Anund Moyee Chowdhrani* v. *Boykantnath Roy*(1), *Ram Soondur Thakoor* v. *Taruck*

(1) 8 Suth. W.R., 193.

Chunder Turkoruttun(1)). Such usage and custom is not restricted—as apparently held in *Sri Raman Lalji Maharaj* v. *Sri Gopal Lalji Maharaj*(2) to cases in which there are emoluments attached to the office, but extends as well to cases like the present in which the trustees have no beneficial interest. The usage is as wholesome in the one case as in the other, for the efficient and smooth discharge of the duties of the office which, being hereditary in the family, devolves on all the members thereof as co-trustees however numerous they may be.

The view taken by the learned Judges of the Allahabad High Court in *Sri Raman Lalji Maharaj* v. *Sri Gopal Lalji Maharaj*(2) that one of several co-trustees is not entitled to ask a Court to partition the duties of the trust between himself and his co-trustees so as to give him the exclusive possession and management of the trust property for (say) six months in the year, putting the other trustees entirely aside during his period of management and that trusteeship is not "personal property" liable to partition is one to which no exception can be taken. But as already pointed out an arrangement by which the several co-trustees are to discharge their duties in rotation, each for a certain period, is not even during the period of management by each in rotation, a management and possession of the trust property (by such co-trustee) to the exclusion of and adversely to the other co-trustees. It could hardly be denied that the author of a trust who appoints several co-trustees might (as in *Attorney-General* v. *Holland*(3) already referred to) provide that each trustee in rotation should be the acting trustee for a year and that it would be competent for a Court in the exercise of its equitable jurisdiction to settle a scheme for the management of a public religious or charitable trust by the various co-trustees in rotation, if such management would be more beneficial to the interests of the trust than the joint and concurrent management thereof by a large number of co-trustees. If so it is difficult to see on what principle it could be held that it is not competent to the co-trustees themselves to settle a scheme of management by turns (*cf.* Perry on 'Trusts,' paragraph 417), having regard to the considerations above adverted to, as to the duration of the turn of each co-trustee and that such arrangement can be terminated

(1) 19 Suth. W.R., 28. (2) I.L.R., 19 All., 428.
(3) 47 R.R., 476.

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at the will and pleasure of any of the co-trustees. Probably the juristic basis for the usage and custom above referred to is not strictly the legal right of partition of ordinary joint family property, but the equitable right to settle a suitable scheme for the efficient and satisfactory management of trusts—the duration of the turns of the several members in rotation being however fixed with reference to the law of partition. It has, however, to be borne in mind that that the interests of the trust are paramount, and the scheme of management only subsidiary and if it be shown to the satisfaction of the Court that the existing scheme, however equitable it may be as to the relative distribution and apportionment of the management as between the co-trustees themselves, is injurious to the interests of the trust, the Court has full power to alter the scheme both as to the duration of the turns and otherwise as to it may seem appropriate.

The appeal fails and must be dismissed with costs save that the portion of the decree relating to the delivery of the accounts will be modified by omitting the words "Schedule C" and substituting therefor the words "of the temple in the possession or under the control of the defendant."

APPELLATE CIVIL.

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

1903. April 21, 22.

THEYYAN NAIR AND THREE OTHERS (DEFENDANTS NOS. 1, 3, 4 AND 5), APPELLANTS,

v.

ZAMORIN OF CALICUT AND OTHERS (THIRD PLAINTIFF AND DEFENDANTS NOS. 11 TO 19, 25 TO 28 AND 20TH REPRESENTATIVE), RESPONDENTS.*

Malabar law—Adimayavana tenure—Land granted for services rendered prior to grant—Right of landlord to eject.

An Adimayavana tenure in South Malabar is a permanent one, and where land has been granted on it for services rendered prior to the grant, the landlord cannot eject the tenant so long as the land remains in the family of the grantee.

* Second Appeal No. 1265 of 1901 presented against the decree of T. Venkatarama Ayya, Subordinate Judge of South Malabar at Palghat, in Appeal Suit No. 230 of 1901 presented against the decree of M. G. Krishna Rao, District Munsif of Temelprom, in Original Suit No. 360 of 1899.