This decision was followed in *Bhimawa* v. *Sangawa*(1) and *Limawa* v. *Mahadgauda*(2).

The Vakil for the respondent argues that the absence of consultation with the younger widow renders the adoption invalid and relies on the analogy of *Subrahmanyam* v. *Venkamma*(3) and the remarks at page 636, but we do not think that the case is in point. The junior widow is bound, as a matter of duty, to consent, and if, as their Lordships of the Privy Council say (*The Collector of Madura* v. *Moottoo Ramalinga Sathupathy*(4)), the consent of kinsmen is required by reason of the presumed incapacity of women for independence rather than the necessity of procuring the consent of all those whose interest in the estate would be defeated by the adoption, it would seem that the omission to consult the co-widow though no doubt improper, would not be a sufficient reason for holding the adoption to be invalid.

We must, however, dismiss the appeal with costs on the ground that no adoption took place.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Davies.

PRAYAG DOSS JI VARU, MAHANT (DEFENDANT), APPELLANT IN APPEAL No. 236 OF 1901 AND RESPONDENT IN APPEAL SUIT No. 38 OF 1902,

v.

TIRUMALA SRIRANGACHARLAVARU AND ANOTHER (PLAINTIFFS), RESPONDENTS IN APPEAL SUIT No. 236 OF 1901 AND APPELLANTS IN APPEAL No. 38 OF 1902.*

1905. January 5, 6, 9, 11. February 10.

Civil Procedure Code—Act XIV of 1882, *s.* 539—*'Under the trust' meaning of—Power of appointing additional trustees or controlling body.*

Under section 539 of the Code of Civil Procedure, the Court in sanctioning a scheme, may provide for the appointment of additional or new trustees, though such appointment may not be in conformity with the original constitution of the trust or with the rules in force in respect to it. The words 'under the trust'

(1) I.L.R., 22 Bom., 206. (2) I.L.R., 22 Bom., 416.
(3) I.L.R., 26 Mad., 627. (4) 12 M.I.A., 397 at p. 442.

* Appeals Nos. 236 of 1901 and 38 of 1902, presented against the decree of K. C. Manavedan Raja, Esq., the District Judge of North Arcot, in Original Suit No. 31 of 1898.

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in section 539 of the Code of Civil Procedure have no reference to such original constitution or the rules. The Court of Chancery in England has always exercised such powers and in the absence of express words restricting the powers of Courts in this country, the Legislature must be presumed to have conferred similar powers upon them by section 539 of the Code of Civil Procedure.

Chintaman Bajaji Dev v. *Dhondo Ganesh Dev*, (I.L.R., 15 Bom., 612), and *Annaji* v. *Narayan*, (I.L.R., 21 Bom., 556), followed.

A scheme framed by the Court may be liable to variation for good cause shown.

Re Browne's Hospital v. *Stamford*, (60 Law Times, 288), referred to.

The directions in a scheme framed under section 539 of the Code of Civil Procedure may be enforced in execution on application by persons interested.

Damodarbhat v. *Bhogilal*, (I.L.R., 24 Bom., 45), followed.

THE plaintiffs, as persons interested in the Tirupati Temple, brought this suit under section 539 of the Code of Civil Procedure in the District Court of North Arcot for framing a scheme for carrying out the trusts of the temple at Tirupati. The facts are fully set out in the judgment.

The District Judge sanctioned a scheme by which amongst other things, a committee of management was formed and provision was made for the appointment of additional trustees.

Both parties appealed.

Sir *V. Bhashyam Ayyangar*, *R. Sadagopachariar*, *V. Krishnaswami Ayyar*, *S. Gopalaswami Ayyangar* and *T. T. Tiruvenkatachariar* for appellant.

P. R. Sundaram Ayyar and the Hon. Mr. *L. A. Govindaraghava Ayyar* for respondents.

JUDGMENT.—The temple of Sri Venkateswara in Tirumalai or Tirupati in the North Arcot district is a very ancient Hindu temple to which worshippers resort from all parts of India, and is in receipt of an annual income of between 2 and 3 lakhs of rupees. Prior to the establishment of the British Government, the management of the institution was directly under the ruler of the country for the time being. After the advent of the British, the management passed into the hands of the East India Company, and subsequent to the enactment of Regulation VII of 1817 of the Madras Code, it was carried on under the control of the Board of Revenue through the Collector of the district. With reference to a despatch of the year 1841 from the Court of Directors ordering the immediate withdrawal from all interference on the part of the officers of Government with native temples and places of religious resort, the management of the temple was in 1843 made over to

Seva Doss, the head of a Mutt called Hathiramji Mutt, situated in the town of Tirupati at the base of the hill on which the important shrine stands. In the 'sanad' by which this transfer of management, was effected, it was provided that Seva Doss' successors in the Mutt should be his successors as vicharanakartha or manager of the temple. Seva Doss having died in 1864, Darma Doss succeeded him, and, on Darma Doss' death in 1880, Bagavan Doss became manager and continued so still 1890. From 1890 to 1894 Mahabir Doss was manager. And from 1895 to 1900 Ramakisore Doss, the defendant in the two suits Nos. 31 of 1898 and 10 of 1899 on the file of the North Arcot District Court, held the management; and on his death, pending the litigation, the present Mahant as the head of the Mutt is styled, succeeded to the office of manager and was brought on the record as the legal representative of Ramakisore.

Now, when in 1843, the management was transferred to Seva Doss, it was, no doubt, expected that the management by the Mahant would prove satisfactory, but the history of what took place subsequent to Seva Doss' death is, to put it shortly, a record of waste and embezzlement.

Persons interested in the institution were not slow to bring the misconduct of the managers to the notice of the authorities. A suit was brought against Darma Doss, the second manager, charging him with misconduct and malversation. The charges were established and the District Court gave a decree against him. On appeal the decree was confirmed, and this Court taking a less lenient view than the District Judge, came to the conclusion that Darma Doss' misconduct was fraudulent and such as to justify his dismissal, but the dismissal was not ordered for the reason that it was apprehended that his successor might not prove a better manager. In spite of this, the third manager, Bagavan Doss' acts of mismanagement, which were many, were also made the subject of judicial proceedings. A charge of criminal misappropriation with reference to a quantity of gold coins belonging to the temple of the value of over 2 lakhs of rupees was instituted against him, and, after a prolonged trial, he was convicted by the Sessions Court of North Arcot and sentenced to 18 months' imprisonment. It was pending his incarceration under that sentence, that Mahabir, with Bagavan Doss' permission, took charge of the management of the temple. The record shows that allegations

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of malversation were made against him as well and proceedings taken, but owing to his death they were not prosecuted further.

The present suits Nos. 31 of 1898 and 10 of 1899 were brought against the last holder of the office, Ramakisore, and upon the evidence adduced which is practically uncontradicted, the District Judge has found, in our opinion, rightly, that Ramakisore received bribes to the extent of fifty thousand rupees for granting leases of the landed properties of the temple or showing favour to the contractors During the pendency of the suits he was murdered, so that the suit for his removal from the trusteeship (10 of 1899) became infructuous, but the other suit (31 of 1898) for the settlement of a scheme was heard and decided and the decree passed by the Judge in the matter is the subject of appeals Nos. 236 of 1901 and 38 of 1902, which have now to be disposed of.

It may here be pointed out that the Mahant as well as the byragees who form the fraternity of the Hathiramji Mutt are not natives of this Presidency, but come from the northern parts of India. The Mahants, so far as appears in the evidence in the case, have not been men of any education and are celibates supposed to have little or no concern with worldly affairs.

The present Mahant was brought down from Northern India only after the death of his predecessor in 1900, and was then a minor under 18 years of age, unacquainted with even the vernacular of the country. With reference to the actual administration of the affairs of the temple, the Mahants are more or less dependent upon the byragees of the Mutt, and it is not surprising that they have proved altogether inefficient as managers, as also, in most instances, dishonest. Another point to be remembered is that they possess no private property from which the temple can be recouped in respect of the embezzlements committed by them. Properties to which a Mahant succeeds as the head of the Mutt are not at his disposal except for the purposes of that institution, and even the incomes received by a Mahant during his incumbency are subject to a first charge in respect of disbursements appropriate to the Mutt. The result has been that, notwithstanding that decrees have been obtained for large sums against the Mahants concerned, the temple has not been able to recover any portion of the amounts decreed save in one instance where the decree debt was paid up, but was immediately followed by another act of embezzlement of temple funds.

It is thus clear that the arrangement made in 1843 for the administration of the institution has not answered the expectations then entertained, that the Mahants have shown themselves to be utterly incompetent to discharge the duties of the office properly, and that the surplus income has been misappropriated by them partly for their own personal use and partly for the aggrandisement of the Mutt. Unless, therefore, steps are taken to impart real efficiency to the management, to provide checks against peculation and to arrange for the due application of surplus funds not required for the usual and ordinary purposes of the institution, it is impossible to safeguard the interests of the institution. We agree, therefore, with the District Judge that this is a fit case for the Court sanctioning a scheme. And it may be added that Sir V. Bhashyam Ayyangar, who appeared for the Mahant both in the lower Court and here, did not take any objection to a scheme being sanctioned. The controversy has been as to the machinery which the District Judge considered necessary to bring into existence in the form of a committee consisting of five members who were to exercise minute and complete control over the Mahant. And it was contended both before him and before us that it was beyond the jurisdiction of the Courts to establish such a controlling authority. And it was also strongly urged that it was not competent, in cases like the present, for the Courts to appoint new or additional trustees. After a careful consideration of the authorities referred to on both sides, we are unable to accept either of the contentions urged on behalf of the Mahant. No doubt section 539 of the Civil Procedure Code with reference to which the present suit has been brought, speaks of the appointment of new trustees "under the trust." This, however, does not, in our opinion, mean only in conformity with the original constitution of the trust or with the rules now in force in respect to it. The passages in Tudor on 'Charities' and particularly the observation of Jessel, Master of the Rolls, in *In re Burnham National Schools*(1), to which our attention was drawn on behalf of the plaintiffs, show beyond a doubt that the Court of Chancery always possessed the power to appoint additional trustees, even though such appointment involved a departure from the arrangement contemplated in the constitution of the trust. The case in *In the matter of the*

(1) L.R., 17 Eq., 246.

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charity called Storey's Almshouses in the town of Cambridge(1) was a case under Lord Romilly's Act and the language used by the Lord Chancellor there was with reference to the question whether the Court had jurisdiction to appoint additional trustees in a case brought before it on petition under that Act. That language could not be taken as intended to negative the existence of the power in the Court of Chancery to appoint additional trustees in proceedings otherwise duly taken before it. The same observation applies to *Ludlow (corporation of)* v. *Greenhouse*(2). The decision in *ex parte Bolton School*(3), as we understand it, proceeds on the view that, according to the fair construction of the Act of Parliament then in question, it was not open to the Court to alter the constitution laid down by that Act of Parliament in respect of the appointment of a trustee. The enactment of section 539 of the Code, as it now stands, was long after the passing of the English Trustees Act of 1850. Presumably, therefore, that section may be taken as intended to confer upon the Courts in this country the same power that the Courts in England possessed at the time of its enactment. There is no reason for thinking that the Indian Legislature meant to control the power of the Courts in this country only in this one respect as to the appointment of new and additional trustees, whilst conceding them powers as large as those possessed by the English Courts in other respects. Had that been the case the Legislature would have used language expressive of this limitation. That the High Court and the District Courts in this country to which the jurisdiction is confined possess the same practically unlimited jurisdiction as the Court of Chancery in matters relating to the administration of public charities, religious or otherwise, was taken for granted in the cases in *Chintaman Bajaji Dev* v. *Dhondo Ganesh Dev*(4) and *Annaji* v. *Narayan*(5), cited for the plaintiffs.

It is not, however, necessary to pursue this matter further as, upon the facts of this case, the Mahant is not a trustee deriving his power of management under the constitution originally laid down centuries ago. As already pointed out, the institution was completely under the control of the public authorities up to 1843, and when the management was transferred to the Mahant in that year, it was an arrangement made by the Board of Revenue in

(1) 9 L.J. Eq., 93.
(2) 4 E.R., 803.
(3) 2 Brown, 662.
(4) I.L.R., 15 Bom., 612.
(5) I.L.R., 21 Bom., 556.

whom the control of such institutions was then vested under the Regulation of 1817. In other words, the arrangement was analogous to a scheme settled by a lawful authority and, therefore, quite liable to be varied by that or other authority, legally competent so to alter or modify it. Sir V. Bhashyam Ayyangar did not contend that a scheme containing, among others, provisions relating to the appointment of additional trustees sanctioned by a Court was not liable to variation on good cause being shown. And if authority on the point were necessary, reference may be made to *Re Browne's Hospital* v. *Stamford*(1). There is, therefore, nothing to prevent a scheme being framed providing *inter alia*, for the appointment of an additional trustee or the creation of a controlling body such as that sanctioned by the Bombay Courts in the cases already cited.

The matter for determination therefore is, as to the actual terms of the scheme, to be sanctioned. We are clearly of opinion that the formation of a committee such as that directed by the District Judge is not calculated to secure efficient management. We think considerable difficulty will be experienced in the selection now, and from time to time hereafter, of competent men to act as honorary members of the committee. Occasional visits by persons not resident in the immediate neighbourhood of the institution would hardly afford sufficient check. A body consisting of so many as five members without any emoluments expected to exercise a detailed control over the discharge of his duties by the Mahant by a unanimous vote in some instances and a fixed majority in others—not to refer to other restrictions prescribed by the Judge—is too cumbrous a machinery to work smoothly and effectively. It seems to us, therefore, that the best course is to appoint one additional trustee to take part in the management with the Mahant. And in order that such trustee may bring to the discharge of his duties, capacity, education and training calculated to make him a responsible co-adjutor with the Mahant, it is essential that he should receive from the funds of the institution a fitting remuneration for his onerous duties, the amount thereof to be fixed by the District Court, at a sum not lower than Rs. 400 and not exceeding Rs. 500 per mensem. The appointment of this trustee should vest in the District Court of

(1) 60 L.T., 288.

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North Arcot and the person so to be appointed should be a caste Hindu and his term of office should extend for five years, but he should be eligible for re-appointment. In the case of a difference of opinion arising between the two trustees the matter must be referred to the Pedda Jiyangar whose opinion should be followed. Either of the trustees should be liable to summary removal by the District Court on good cause shown subject to appeal to the High Court. In addition to the matter of the appointment of such new trustee the scheme should first and foremost provide for the utilization of the surplus funds coming into the hands of the trustees from time to time. The necessity for making such a provision is imperative to guard against the wasting or embezzlement of such accumulations in future which have been not only possible in the past but encouraged owing to the want of any provision for their utilization. There is no complaint that the services in the temple have not been duly performed but after all that has been done, the Mahant has found a large surplus in his hands which the accounts show he has expended upon objects more or less objectionable. The surplus income may be estimated at about a lakh or so per annum. Proceeding on the *cy-pres* principle the following are the objects on which both sides are agreed that the surplus funds may be appropriately spent:—

1. The establishment of a college in Lower Tirupati for the promotion among Hindus of a knowledge of the Hindu religion and shastras, such college to be styled "The Sri Venkateswara Vidyasala" with a library attached and with suitable buildings inclusive of residential quarters for the teaching staff as well as hostel accommodation for students who may be permitted to remain in the premises of the college, the annual expenditure in the upkeep of the college not exceeding, until further orders, the sum of twenty-four thousand rupees.

2. The distribution of prizes annually to persons possessing proficiency in the one or other of the various Hindu shastras, to an extent, until further orders, not exceeding rupees twelve thousand. Rules for the management of the college and the award of prizes shall be made by the trustees from time to time subject to the approval of the District Court.

3. The foundation and maintenance of a hospital on the hill for the relief of the numerous pilgrims and worshippers visiting the place.

4. The construction and maintenance of a choultry or rest-house in the same place for the use and accommodation of all classes of pilgrims visiting the shrine.

5. The introduction of good water-supply on the hill.

6. The improvement of the road communications to the shrine.

The scheme should also authorize the trustees to sell unnecessary accumulations of jewels and properties and invest the sale-proceeds in Government paper until the money is required for the objects referred to above or for other purposes connected with the institution. It should be further provided that all other funds not required for immediate expenditure should be invested in the same way, provided that, with the sanction of the District Court, such funds may be invested in purchases or first mortgages of immovable properties. Leases for over five years of immovable properties vested in the temple as well as sales and mortgages thereof are not to be made without the sanction of the District Court. The trustees should provide for efficient checks against misappropriation of the offerings daily received in the shrine between the time of such receipt and that of their deposit in the usual place of custody. They should also provide for proper sets of accounts being maintained and for their inspection by persons interested in the institution, for budgets of receipts and expenditure being prepared annually, for estimates and plans of important works being made before the execution of the works is undertaken, and for an annual audit by a competent auditor. A brief report by the trustees of their administration for the past year should be published early in the next year.

The scheme should prohibit any transaction of a pecuniary or mercantile character between the Mutt on the one hand and the temple on the other, or the employment of any persons as common servants of the two institutions.

Power should be reserved for application by the trustees or by persons interested being made to the District Court with reference to the carrying out of the directions of the scheme.

The directions in the scheme may be enforced by the District Court in execution upon application by persons interested (*Damodarbhat* v. *Bhogilal*(1)).

(1) I.L.R., 24 Bom., 45.

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Power should also be reserved for application being made to the High Court by the trustees or by persons interested for any modification of the scheme that may be found necessary.

It should come into force on the 1st January 1906.

Costs in these two appeals of both parties will be paid out of the funds of the temple.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Boddam.

1904. November 2, 3, 4, 8, 11.

GOPALASAMI CHETTIAR (DEFENDANT), APPELLANT,

v.

FISCHER (PLAINTIFF), RESPONDENT.*

Rent Recovery Act (Madras) VIII of 1865, s. 11—Rules for deciding disputes as to rates of rent—Improvement of land by tenant before and after passing of the Act—Right of landlord to levy enhanced rate of rent.

A landlord is not entitled to levy a tax on improvements effected by a tenant at his own expense, whether such improvements were made before or after the passing of the Rent Recovery Act, 1865, but a contract express or implied by a tenant to pay such a tax would be enforced, whether made before or after 1865, for the law does not declare such a contract to be illegal.

Where a tenant has been paying an enhanced rent in consequence of improvements made by him before the passing of the Act, there will be an inference from such payments, in the absence of anything to rebut it, that there was a contract to pay an enhanced rent, and such contract would be binding under the Act. Each tenant's contract, if any, is to be inferred from his own acts and payments rather than from those of other tenants.

SUIT to enforce acceptance of pattahs. The facts material to the case appear from the judgment of the High Court. The Deputy Collector decreed in plaintiff's favour, which decree was affirmed on appeal.

Defendant preferred this second appeal.

T. Subrahmania Ayyar for *R. Sadagopachariar* for appellant.

T. Rangachariar for respondent.

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* Second Appeal No. 762 of 1902, presented against the decree of L. C. Miller, Esq., District Judge of Salem, in Appeal Suit No. 30 of 1901, presented against the decision of M.R.Ry. T. Vijiaragava Chariar, Personal Assistant Deputy Collector of Salem, in Summary Suit No. 63 of 1900.