MURUGAPPA CHETTI v. NAGAPPA CHETTI.

The conclusion of the Subordinate Judge that the plaintiff is the validly adopted son of the defendant must be held to be right and it is unnecessary to consider the argument that the defendant is estopped from denying the plaintiff's right as adopted son.

As regards, also the other point raised, viz., whether the property in which a share has been decreed to the plaintiff is the self-acquired property of the defendant, the decision of the Subordinate Judge is correct. The allegation of the defendant that though his father had property yet the whole of it was given away by him to a temple and no portion thereof passed to the defendant is a story entirely unsupported by trustworthy evidence. The testimony of the witnesses examined on behalf of the plaintiff proves that the defendant from his infancy was a member of a joint trading family and got on division his share.

The appeal fails and is dismissed with costs.

SANKARAN NAIR, J.—I agree.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Mr. Justice Boddam.

1905 September 11, 12.

KRISHNASWAMI AYYANGAR (PLAINTIFF), APPELLANT,

v.

SIVASWAMI UDAYAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

Religious Endowments Act XX of 1863, s. 7—Rules under—Election—Giving consideration in return for votes, what amounts to—Payment by candidate of expenses to voters who had undertaken to vote for him disqualifies candidate.

On general principles, as well as under rule 19 † of the rules framed by the Local Government for the conduct of elections under section 7 of the Religious Endowments Act XX of 1863, a candidate can be held to "give consideration in return for a vote" only when such consideration passes as the result of bargain.

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* Appeal No. 154 of 1901 presented against the decree of G.F.T. Power, Esq., District Judge of Tanjore, in Original Suit No. 5 of 1899.

† *Rule* 19.—Any person proved to have given, directly or indirectly, any valuable consideration whatever, in return for a vote, shall be thereby disqualified from being elected.

Payment of train fare and carriage expenses by a candidate to voters who had undertaken to vote for him will constitute such payment and such candidate will be disqualified from being elected under the rule.

It will be otherwise where the provision for payment is a unilateral act which might be accepted and acted upon or ignored by the other party.

The burden lies on the candidate so paying of proving that the payments were otherwise than in return for votes.

Cooper v. *Slade*, (6 H.L.C., 746), referred to.

The Bolton Election Petition, (3 L.T., 194), distinguished.

A VACANCY having occurred in the Devastanam Committee of the Temple at Kumbakonam by the death of one of the members, the remaining members defendants Nos. 1 to 6, held an election to fill the vacancy under the provisions of section 10 of Act XX of 1863. The plaintiff and another R were rival candidates. At the end of the poll, the plaintiff having secured the largest number of votes, was declared duly elected by the sixth defendant on behalf of himself and the defendants Nos. 1 to 5.

On the next day a meeting was held at the Committee office at which defendants Nos. 1, 3, 5 and 6 attended and the election of the plaintiff was cancelled. Subsequently another election was held and the seventh defendant was declared duly elected in place of the deceased member. The plaintiff instituted this suit for a declaration that he had been duly elected a member of the Committee and that the election of the seventh defendant was void and illegal.

His case was, that he having secured the majority of the votes and the sixth defendant having made the declaration, the subsequent proceedings were *ultra vires* and illegal, that all the Committee had to do was to announce the result of the election in the manner provided by law and that even in the absence of the declaration by the sixth defendant he was duly elected and entitled to be declared as such.

The defendants pleaded that the plaintiff had been guilty of various malpractices in securing votes and in the conduct of the election; that his election was invalid and that they had the right to cancel it.

The plaintiff admitted having spent Rs. 2,000 or more on the voters, for their travelling expenses, etc., but failed to furnish accounts of the money so spent. The District Judge accordingly held that there was grave reason to suspect that the plaintiff had bought votes, and that his election was invalid under rule 19.

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He consequently refused the declaration and dismissed the plaintiff's suit.

Plaintiff preferred this appeal.

The Advocate-General (Hon. Mr. *J. P. Wallis*), *V. Krishnaswami Ayyar*, *P. R. Sundara Ayyar* and *K. Srinivasa Ayyangar* for appellant.

Mr. *E. Norton*, *T. V. Seshagiri Ayyar*, *K. R. Krishnaswami Ayyangar* and *T. S. Krishna Ayyar* for respondents.

JUDGMENT.—The Advocate-General has argued at length the question of the irregularities referred to by the District Judge as having taken place in the holding of the election. He has also laid great stress upon the members having cancelled the election instead of proceeding to declare the result of it. Having regard to the conclusion we have arrived at with reference to the conduct of the appellant in connection with the election we do not think it necessary to discuss the matter of the irregularities or to give a decision as to the procedure adopted by the members of the Committee, though as at present advised we ought to say they acted altogether beyond the scope of their powers and contrary to their duty in resolving to cancel the election. We think that the appellant is not entitled to the declaration sought for by him inasmuch, as upon the evidence, we hold that he was disqualified to be elected as a member of the Committee with reference to rule 19 of the rules framed by Government under section 7 of Act XX of 1863. The evidence bearing on this point is quite short and consists of statements made by the appellant himself and one of his witnesses. The appellant admitted that he spent in connection with the election Rs. 2,000 or more, and added that he kept no accounts of such expenditure. This was in his cross-examination. In his re examination he stated: "The sum spent by me for the expenses of myself and my friends and canvassers in touring about the circle was about Rs. 500 and the cost of bringing my voters to Kumbakonam, train fare and cart-hire, etc., was about Rs 1,500. The voters live in three taluks." The other witness stated: "I saw his (plaintiff's) agent paying the voters their railway fare. Nothing more was paid to them so far as I know. No bribes were paid to them."

It is a matter of some surprise that the witnesses were not examined more in detail as to these expenses. We cannot altogether agree with the suggestion that it lay upon the respondents

to pursue the matter further. It was equally important for the appellant to place before the Court all the information in his power bearing upon the question so as to remove all suspicion in the matter. The District Judge came to the conclusion that the appellant spent money for the purpose of obtaining votes and acted in breach of rule 19 referred to and we feel compelled to adopt the same view. No doubt as urged by the Advocate-General, to warrant the appellant being declared disqualified within the meaning of the rule it must clearly appear that money or other valuable consideration was given in return for votes; in other words that such consideration passed as the result of a bargain. This is the only proper view to be taken of the language of the rule itself and that is also the construction to be placed upon the rule with reference to the general principles laid down in the leading case of *Cooper* v. *Slade* (1) and the subsequent decisions in which that case has been referred to, explained, or distinguished. Those cases turned upon the contents of writings, with reference to which the question whether the payment was made as a matter of bargain had to be decided. The present case is somewhat different in that there is no writing to be construed, and the decision depends upon inferences which we, as Judges of fact, have to draw from the statements of the witnesses already noticed. The case of "*The Bolton Election Petition* (2)" is entirely dissimilar from the present. In that case it was found that there was no bargain at all and that the provision for carriage which was promised was altogether a unilateral act which might be accepted and acted upon or entirely ignored at the option of the other party. Here, admittedly, there was a payment to the voters themselves who had come to Kumbakonam for the very purpose of the voting for the appellant and for him alone. This is clear from the appellant describing the parties to whom payments were made as "my voters", and his witness describing them as the appellant's voters. Such language implies a previous understanding as to what their votes were to be and the payment in the circumstances can hardly be treated as otherwise than in return for the votes. If the appellant did not, as he says, keep accounts as regards the money spent by him in connection with

(1) 6 H.L.C., 746. (2) 31 L.T., 194.

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the election that is not a circumstance which can be treated as in his favour.

Having regard to the reason for the provision in rule 19 it was incumbent upon the appellant to be able to furnish accurate information with reference to payments made by him to voters. His statement in this respect was not confined to railway fare and cart-hire as appears from the word "etc." following upon them in his evidence and this rendered it all the more necessary that the whole expenditure should be fully and duly accounted for if inferences adverse to him were to be excluded.

For these reasons the appeal fails in our opinion and is dismissed with costs.

APPELLATE CIVIL.

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

1905. November 24, 25, 29, 30.

SAMINATHAN CHETTIAR AND OTHERS (PLAINTIFFS NOS. 1, 3 AND 4), APPELLANTS,

v.

SWAMIAPPA NAICKER AND OTHERS (FIRST DEFENDANT, LEGAL REPRESENTATIVES OF SECOND DEFENDANT AND DEFENDANTS NOS. 4 AND 5), RESPONDENTS.*

Mortgage—Mortgage-Decree, rate of interest in—Contract rate not compulsory after date fixed for redemption.

In suits on mortgages, it is not compulsory on the Court to allow the contract rate of interest after the date fixed for redemption by the decree.

Commercial Bank of India v. *Ateendrulayya*, (I.L.R., 23 Mad., 637), followed.

THE facts necessary for this report are set out in the judgment.

V. Krishnaswamy Ayyar, *K. Srinivasa Ayyangar* and *R. Sivarama Ayyar* for appellants.

S. Srinivasa Ayyangar for second and third respondents.

K. N. Ayya for first respondent.

T. V. Gopalasamy Mudaliar for fifth respondent.

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* Appeal No. 166 of 1901, presented against the decree of M.R.Ry. S. Doraisamy Ayyangar, Subordinate Judge of Tinnevelly, in Original Suit No. 65 of 1897.