action his application must have been refused unless he had been able to show that the directors had acted capriciously and not honestly and reasonably. (Reference may be made to *In re Gresham Life Assurance Society ex parte Penney*(1)) and *In re Coulfort China Company*(2).

It is clear that the plaintiff in the present case could not have proved to the satisfaction of a Court that the directors acted capriciously and unreasonably as it is shown that the holder of the shares never applied to have them transferred and that the plaintiff never made any attempt to produce such evidence as the directors were clearly entitled to insist on to substantiate his claim to have them transferred to his name. The directors in refusing to do anything in the absence of such evidence without an indemnity bond from the plaintiff must be held to have acted reasonably and with a proper regard for the interests of the company. The decision of the District Judge is, in our opinion, right, and this Appeal must be dismissed with costs.

APPELLATE CIVIL.

Before Sir Charles Arnold White, Chief Justice.

A. L. V. GOPALA AYYAR, PETITIONER,

v.

A. ARUNACHALLAM CHETTY, RESPONDENT.*

1902 February 27.

Religious Endowments Act—XX of 1863, s. 5—Vacancy in office of manager—Appointment by Civil Court—Civil Procedure Code—Act XIV of 1882, s. 622—Jurisdiction of High Court to entertain petition to revise order appointing manager.

An order made by a Civil Court under the powers conferred by section 5 of the Religious Endowments Act is a Judicial adjudication in the matter before it, and it is competent to the High Court to entertain a civil revision petition against such an order.

Before the jurisdiction which is conferred by section 5 of the Religious Endowments Act can be exercised by a Civil Court, there must be a vacancy in the office, there must have been a transfer to the former trustee and a dispute must have arisen respecting the right of succession to the office. The words in section 5, "any dispute shall arise respecting the right of succession," apply to a case in which a question has arisen with reference to the person who is to succeed to the office, and the jurisdiction of the Civil Court under the section is

(1) L.R., 8 Ch., 446. (2) L.R., [1895], 2 Ch., 404.

* Civil Revision Petition No. 194 of 1901 presented against the order of H. Moberly, District Judge of Madura, dated 2nd May 1901.

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not confined to cases in which a dispute has arisen respecting the right to succeed to the office.

APPLICATION, under section 5 of the Religious Endowments Act, for the appointment of a trustee-manager of the Rameswaram Devasthanam at Madura. The last hereditary manager or Dharmakarta of the Devasthanam was dismissed from office in execution of the decree in Original Suit No. 5 of 1852 on the file of the District Court of Madura, and a manager was appointed by the District Judge. This manager resigned in 1893, when the Rajah of Ramnad was appointed, by the District Court, until some other person should establish by suit his right of succession to the office. The Rajah having resigned, Mr. Arunachalam Chetty was, on 21st December 1900, appointed by the District Court to act temporarily, applications being invited from persons willing to accept the post. Sixteen candidates in due course presented applications, after considering which, the District Judge, acting under section 5 of the Religious Endowments Act, appointed Mr. Arunachalam Chetty to act as manager until some other person should by suit establish his right of succession to the office.

Against that order, one of the applicants presented this civil revision petition.

V. Krishnasawmy Ayyar, for respondent, took the preliminary objection that the petition could not be entertained. He based the objection on the ground that the petitioner had been an applicant for the office in the District Court, and also that the order which it was sought to revise had not been passed by a judicial tribunal, and that, in consequence, there was no "case," within the meaning of section 622 of the Code of Civil Procedure. He referred to *Minakshi Naidu* v. *Subramanya Sastri*(1).

The Court overruled the objection.

P. S. Sivasamy Ayyar for petitioner.

JUDGMENT.—This is a revision petition against an order made by the District Judge of Madura under section 5 of the Religious Endowments Act (Act XX of 1863). The party who asks for the interference of this Court was an applicant for the office, but he was not appointed. Mr. Krishnasawmy Ayyar appears to support the order on behalf of the party who was appointed to the office by the District Judge, and has raised a preliminary objection to the competence of this Court to entertain the petition. For the moment it will be sufficient if I say that

(1) I.L.R., 11 Mad., 26.

section 5 of Act XX of 1863 empowers the Civil Court to appoint a manager of a temple to act until some other person has by suit established his right of succession to the office of manager. The preliminary objection is based upon two grounds The first is that the person asking for the interference of this Court has no *locus standi* in the matter, because he was himself an applicant for the office in the proceedings before the District Judge. It seems to me clear that, if the present petitioner was entitled to apply to the District Judge for appointment to this office, assuming it is competent for this Court to entertain the revision petition, it follows that he is entitled to apply to this Court to exercise its revisional jurisdiction. Therefore the question, as far as this point is concerned, is "was the present petitioner entitled to apply to the Civil Court for the appointment of a manager?" Now, the words of section 5 are "it shall be lawful for any person interested in the mosque, etc., to apply to the Civil Court to appoint a manager." The words are designedly of a wide and general character, and having regard to the definition of interest contained in section 15 and the very general language which is used in section 5, I have no hesitation in holding that the petitioner was a person interested so as to give him a right to apply to be appointed as manager. So much for the first ground of the preliminary objection. The second ground is that under section 5, the Civil Court means nothing more than the District Judge for the time being, a *persona designata*, and not the Civil Court as a judicial tribunal, and it has been argued that any order made by the Civil Court under the powers conferred by section 5 is merely the order of a *persona designata* and not an adjudication by a judicial tribunal, and that being so, proceedings under section 5 in which an order is made cannot be said to constitute a case, and that an order made in such proceedings is not a decision in a case, and that the matter, therefore, does not come within the words of section 622 of the Code of Civil Procedure. In support of this contention Mr. Krishnasawmy Ayyar relied on the decision of the Privy Council in *Minakshi Naidu* v. *Subramanya Sastri*(1). In that case their Lordships were dealing with section 10 of the Act, but, for the purpose of the point now before me, no distinction can be drawn, and this is conceded, between the two sections. In the Privy Council case the actual point for decision was, whether an order made under section 10 of Act XX of 1863 was appealable. But in

(1) I.L.R., 11 Mad., 26.

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the course of their judgment their Lordships made certain general observations upon which Mr. Krishnasawmy Ayyar strongly relies in support of his contention. The passage on which he relies is at page 34. It is this:—"In the opinion of their Lordships the tenth section places the right of appointing a member of the committee in the Civil Court not as a matter of ordinary civil jurisdiction, but because the officer who constitutes the Civil Court is sure to be one of weight and authority and with the best means of knowing the movements of local opinion and feeling and one can hardly imagine a case in which it would be more desirable that the discretion should be exercised by a person acquainted with the district and with all the surroundings. The exercise of the discretion being so placed in the District Judge their Lordships are unable to find anything in the tenth section which confers a right of appeal." No doubt that passage contains very convincing reasons for holding that there is no right of appeal from an order made under section 10. The right of appeal is the creature of statute. The question I have to consider here is,—what did the Legislature mean when they used the expression "Civil Court" in section 5 of Act XX of 1863, and it does not seem to me that the reason which induced their Lordships to hold that no appeal lies, because they could not extract any right of appeal from the section, should lead me to hold that, where the Legislature has expressly delegated certain powers to a Civil Court by name, that Civil Court, when it exercises those powers, is not exercising them as a Court, but as an individual who for the time being happens to constitute the Court. I think that if the Legislature intended that an order under section 5 should be made by an officer in his executive capacity, they would not have used the expression "the Civil Court." I hold that an order made by the Civil Court under the powers conferred by the section is a judicial adjudication in the matter before the Court. That being so, I should, apart from authority, be prepared to hold that it is competent to this Court to entertain a revision petition against the order in question. There is apparently little authority on the subject, but such authority as there is supports the view which I have expressed. In the case of *Somasundara Mudaliar* v. *Vythilinga Mudaliar*(1), a preliminary objection was taken that, an order under that section being appealable by the express words of section 622 of the Code, an application for revision could not be

(1) I.L.R. 19 Mad. 258

entertained. That point was argued and it was held, following the decision of the Privy Council, that no appeal lay. Thereupon, the revision petition was heard and disposed of. Now, it is quite true that the objection which has been raised in the present case was not raised there, but the case at any rate shows it never occurred to any one engaged in that case to take the point now raised by Mr. Krishnasawmy Ayyar. Apart from the authorities, I should have been prepared to decide against him on the preliminary point. My opinion as to that is fortified rather than shaken by the decision referred to. As regards the preliminary objection, therefore, I overrule it.

With regard to what I suppose I must call the merits of the case, Mr. Sivasamy Ayyar's first contention is that the order of the District Judge was made without jurisdiction. Now, before the jurisdiction which is conferred by that section can be exercised certain conditions precedent must exist. The first condition, of course, is that there should be a vacancy in the office. If there is no vacancy there is no occasion to appoint a temporary manager. The second condition is that there should have been a transfer to the former trustee. The third condition is that a dispute should have arisen respecting the right of succession to the office. I agree with Mr. Sivasamy Ayyar that the dispute must be antecedent to the proceedings in which the order is made appointing the temporary manager, and that a contest between rival applicants for appointment as temporary manager is not such a dispute as will satisfy the condition precedent which the section requires shall be shown to exist. Mr. Sivasamy Ayyar relies upon a passage in paragraph 3 of the learned Judge's order. That is "the line of lawful pandarams being extinct nobody can establish his right to succeed to the office." That being the finding of the learned Judge, Mr. Sivasamy Ayyar contends that it has not been shown, and it is not a fact, that a dispute has arisen respecting the right to succeed to the office. The Judge finds that nobody can establish his right. I do not think that that can be regarded as a finding of fact. It is merely the statement of the Judge's view of the law in the matter. But even regarding it as a finding of fact, it does not follow because nobody can establish his right a dispute regarding the right could not have arisen. Mr. Krishnasawmy Ayyar, on the other hand, says that this case falls within the words of the section, and he refers to another passage in the order of the learned Judge, which

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is as follows:—"The Rajah of Ramnad still claims the right to appoint, or to confirm the election of a pandaram, but that he has no such right is clear from the judgment of their Lordships of the Privy Council, etc." He says that that is sufficient to show that there has been an outstanding dispute with regard to the question of the right of succession to the office. I am not satisfied as to this. I would prefer to decide this case upon the question of construction. What I have to ask myself is,—am I bound to place the extremely narrow construction upon those words which Mr. Sivasamy Ayyar has contended I ought to adopt, or can I, for the purpose of giving effect to what seems to be the obvious intention of the Legislature, place a more generous construction upon the words? Now, nobody can dispute in this case that there is a vacancy in the office Nobody can dispute, I imagine, in the events which have happened, until the question is decided as to who is to succeed to the office, that it is eminently desirable that a temporary manager should be appointed. I am prepared to construe those words "any dispute shall arise respecting the right of succession" as applying to a case in which a question has arisen with reference to the person who is to succeed to the office. Mr. Sivasamy Ayyar's second contention was that there had been an illegality or a material irregularity and he asks me to interfere upon that ground. The suggested illegality or material irregularity was that the District Judge had not made any enquiry into the fitness of Mr. Arunachalam Chetty, the gentleman whom he had appointed and had not made an enquiry into the allegations made by the rival applicants to the office against Mr. Arunachalam Chetty. I find in his order this statement with reference to Mr. Arunachalam Chetty: "During the four months he has been in charge, he has introduced several useful reforms and has shown a most intelligent interest in the welfare of the Devastanam." That is a statement of fact, and I must assume that it is a true statement. The learned Judge has shown an excellent reason why he should exercise the discretion which the section gives him, in the way he did. It seems to me idle to suggest that if from practical experience the learned Judge came to the conclusion that Mr. Arunachalam Chetty was the most suitable person to be appointed temporary manager, he acted with material irregularity in the exercise of his jurisdiction, because he did not enquire into certain allegations made by certain rival candidates.

For the reasons I have stated I think this petition must be dismissed with costs.