On the other hand the case of the plaintiff is that it is a matter of stated and settled accounts and if he is able to show errors in the account, he is entitled to reopen the question. Exhibit III makes it clear that the settlement was made by arbitrators or mediators. Such a settlement is not liable to be reopened, except on the ground of fraud which is not alleged in this case.

The appeal fails on all the points and must be dismissed with costs.

AYLING, J.—I agree.

AYLING, J.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Seshagiri Ayyar.

KADIR MASTAN ROWTHER (PLAINTIFF), APPELLANT,

v.

SENGAMMAL (FIRST DEFENDANT), RESPONDENT.*

1919, December 4.

Trust lands—Permanent lease not void ab initio.

A permanent lease of trust lands is not void *ab initio*; it is only voidable.

SECOND APPEAL against the decree of F. A. COLERIDGE, District Judge of Madura, in Appeal No. 316 of 1917 filed against the decree of N. SUNDARAM AYYAR, Principal District Munsif of Madura, in Original Suit No. 656 of 1911.

The facts are given in the judgment.

W. Kodandaramayya for the appellant.

A. Narayanaswami Ayyar for the respondent.

SPENCER, J.—This is a suit brought by the assignee of a permanent lease granted by the trustee of a trust called Lala Dharmam to recover possession of the suit site from the tenant in occupation. The suit was dismissed in the District Munsif's Court, on the ground that the trustee had no power to alienate the trust property and that his alienation was void and conveyed no title to the plaintiff; and on appeal the District Judge has confirmed this decision and dismissed the appeal.

SPENCER, J.

* Second Appeal No. 105 of 1919.

KADIR MASTAN ROWTHER v. SENGAMMAL, — SPENCER, J.

It is contended before us that the grant of a permanent lease represented not a void but a voidable transaction and that it has not yet been avoided. In *Venkataramana Ayyangar* v. *Kasturiranga Ayyangar*(1) my learned brother stated :

"It is now settled law that ordinarily a permanent alienation of trust properties is ultra vires of the powers of a trustee,"

and the respondent's pleader asks us to treat this expression 'ultra vires' as meaning void; but it does not necessarily have that signification. There is also an expression by ABDUR RAHIM, Officiating Chief Justice, in the Full Bench Opinion in the same case that the alienation of the right of making collections for the temple "was void and did not bind the temple in any way." When the learned Judge used the word 'void' in this context he was not using it as opposed to voidable, as no argument was before him on the point of voidability.

In *Palaniappa Chetty* v. *Sreemath Devasikamony Pandara Sannadhi*(2) the Judicial Committee of the Privy Council observed "the grant of a lease in perpetuity of *debottar* lands at a fixed rent required to be justified by unavoidable necessity." Such an expression would not have been used if the lease was itself a void transaction. Their Lordships compared the position of a *shebait* or trustee with that of a guardian of an infant as regards the management and control of immoveable property. It is well settled that if a guardian exceeds his powers in dealing with the property of an infant his acts are voidable and not void. In *Abhiram Goswami* v. *Shyama Charan Nandi*(3), the Privy Council were dealing with a Mokurari pattah which corresponds to a lease in perpetuity, and they held that such a lease of *debottar* property given by a Mahant was good for the life-time of the Mahant who granted it. It would have been impossible for them to come to this conclusion if the grant had been void *ab initio*. In *Kadir Ibrahi Rowthen* v. *Arunachellam Chettiar*(4), it was held that a lease by a trustee for a period exceeding 21 years was not void but only voidable at the instance of the *cestui que trust*. This was no doubt a decision based upon section 36 of the Indian Trusts Act (II of 1882) which applies only to private trusts. But in this

(1) (1917) I.L.R., 40 Mad., 212. (2) (1917) I.L.R., 40 Mad., 709 (P.C.).
(3) (1909) I.L.R., 36 Calc., 1003. (P.C.). (4) (1910) I.L.R., 33 Mad., 397.

respect the principle appears to be the same, namely, that a lease of trust property which is in excess of the trustee's powers is not void but only voidable. I am therefore of opinion that the lower Courts were wrong in deciding the case upon this point and the appeal must be allowed and the suit remanded to the Court of first instance for trial upon the other issues in the case. Costs will abide and follow the result.

SPENCER, J.

SESHAGIRI AYYAR, J.—I agree. The position of the defendant must be regarded as that of a trespasser. His title has not been gone into, and therefore it must be taken that he resisted the suit on the ground that the plaintiff must show a better title than he himself possessed.

SESHAGIRI AYYAR, J.

The position taken by the lower Courts, and which was pressed upon us by the learned vakil for the respondent, amounts to saying that the alienation by a trustee is void *ab initio*, like an alienation which is opposed to public policy or one made illegally. This position to my mind is untenable. As my learned brother has pointed out, the Judicial Committee have held that a trustee has in certain circumstances power to dispose of the trust property; he can sell it and he can lease the property provided a necessity for doing so has been made out. If that is the true position of a trustee, in granting a permanent lease, if no necessity is proved, he will only be exceeding the powers he possesses. Consequently the transaction, although it may be avoided by persons who could sue on behalf of the trust, would still give the alienee a right until it is avoided. This is the principle which the Judicial Committee must be taken to have enunciated in *Abhiram Goswami* v. *Shyama Charan Nandi*(1), where they say that the alienation was good during the life-time of the grantor. Mr. Justice BENMAN, in *Mahamadgans* v. *Rajabaksha*(2), interprets the decision of the Privy Council in *Abhiram Goswami* v. *Shyama Charan Nandi*(1) as holding that an alienation by a trustee is not void altogether but only voidable. The Privy Council have further held that the power of a trustee of a temple is analogous to that of a manager of a Hindu joint family or the guardian of an infant. As regards the manager

(1) (1909) I.L.R., 36 Calc., 1003 (P.C.). (2) (1913) I.L.R., 37 Bom., 224.

KADIR MASTAN ROWTHER v. SENGAMMAL.

SESHAGIRI AYYAR, J.

of a Hindu family it has never been held that an alienation by him is void *ab initio* it is only voidable. Similarly in the case of an alienation by a guardian of an infant, section 30 of the Guardians and Wards Act (Act VIII of 1890) declares in express terms that it is only voidable. It is also pointed out in *Kadir Ibrahi Rowthen* v. *Arunachallam Chettiar*(1) that the transaction of a private trustee granting a lease beyond 21 years, which the law permits him to grant, is only voidable. Applying the analogy of these legislative provisions I agree with my learned brother that an alienation by a trustee cannot be held to be void.

The result is that if the defendant can show a better title than the plaintiff he will be allowed to retain the property; if, on the other hand, he has no title, he is not entitled to resist the suit brought by the plaintiff until the trustee, or somebody interested in the trust, takes steps to avoid the transaction. He has clearly a title which he can enforce as against a trespasser.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Krishnan.

1919, July 22, December 8.

GOKARAKONDA NARASIMHA RAO (PLAINTIFF), APPELLANT,

v.

GOKARAKONDA PAPUNNA AND EIGHT OTHERS (DEFENDANTS), RESPONDENTS.*

Registration Law, fraud on—Sale-deed—Including a cent of land to enable a Sub-Registrar to register—Item of land, real and owned by vendor—No intention to pass title to vendee—Registration, whether valid.

The inclusion of an item of property belonging to the vendor in a sale-deed without any intention of passing title in it and purely for the purpose of making the deed available for registration in a particular place is a fraud upon the registration law, and such sale-deed must be deemed not to have been properly registered.

SECOND APPEAL against the decree of T. RAJARAM RAO, the Temporary Subordinate Judge of Rajahmundry, in Appeal Suit

(1) (1910) I.L.R., 33 Mad., 347.

* Second Appeal No. 1522 of 1918.