APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Jackson.

NELLIAPPA ACHARI AND OTHERS (DEFENDANTS), APPELLANTS,

1926, November 16.

v.

PUNNAIVANAM ACHARI AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Hindu Law—Mutt—Head of mutt, whether a trustee—Some properties in question belonging to the mutt—Civil Procedure Code (Act V of 1908), sec. 92—Suit under sec. 92 for removal and for a scheme, whether competent.

Where the properties in question belong to a mutt, the head of the mutt is answerable for maladministration as a trustee in a general sense, though he may not be an express trustee in the English sense.

Section 92, Civil Procedure Code, is applicable to such a case, and a suit can be instituted for removal of the head of the mutt and for a scheme, after obtaining the sanction prescribed by the section.

Ram Parkash Das v. *Anand Das*, (1916) I.L.R., 43 Calc., 707 (P.C.), and *Vidya Varuthi* v. *Balusami Ayyar*, (1921) I.L.R., 44 Mad., 831 (P.C.), relied on; *Nataraja Tambiran* v. *Kailasam Pillai*, (1921) I.L.R., 44 Mad., 283 (P.C.), explained.

APPEAL against the decree of R. NAGESWARA AYYAR, Subordinate Judge of Tinnevelly, in Original Suit No. 58 of 1922.

The material facts appear from the judgment.

K. Rajah Ayyar and *V. Ramaswami Ayyar* for appellants.

T. R. Ramachandra Ayyar, *N. A. Krishna Ayyar* and *K. Venkateswara Ayyar* for respondents.

* Appeal No. 197 of 1924.

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JUDGMENT.

ODGERS, J.—This is an appeal from the judgment and decree of the Subordinate Judge of Tinnevelly. The suit was brought by five persons with the sanction of the Advocate-General under section 92 of the Civil Procedure Code against the head of the mutt, Parasamaya Kolarinatha Swamigal and his two sons, for a declaration that certain properties belong to the Parasamaya Kolarinatha Madam at Tinnevelly, that the defendants were in unlawful possession of the property and for a scheme. The defendants in their written statement denied that the properties in question were endowed for a public, religious and charitable trust or that the muttam was of a public, religious and charitable character. They allege that the properties were the private property of the head and that from time immemorial the head of the mutt had been treated as the administrative and disciplinary authority over the five sections of the Viswa Brahmans in the Tamil districts of South India, Travancore, Cochin and Malabar.

The Subordinate Judge held, *inter alia*, on the first two issues (which are the only ones in question in the present appeal), that the mutt was a public, religious and charitable institution within section 92 and that some portions of the properties were held in trust for the institution by the head of the mutt for the time being and were not the absolute private property of the Madathipathi.

A question as to the validity of defendant 1's adoption was also raised. On the appeal these questions were raised, viz., (1) estoppel by reason of the judgment in Original Suit No. 4 of 1919 on the file of the Temporary Subordinate Judge of Tinnevelly, Exhibit B, (2) no vacancy in the office because defendant 1 had

acquired title to it by adverse possession, and (3) the incompetency of the suit under section 92. The first two points were given up and the appeal confined to the last point, the contention being that the head of this mutt is not a trustee. The mutt now appears to be very poor owning only 11 marakkals of land and its affairs have been "in confusion" for several years. There is evidence that besides the *per capita* cotnribution of the Sishyas there are some lands in Kandyapperi and Shoranadai. It is said that the latter is held by the Swami, on express trusts. That the lands are mutt property is, I think, undoubted. Exhibits FFF, FFF-1, GGG, GGG-1, in Appeal No. 321 of 1912 on the file of the High Court, show that in some instances pattas are granted in the official name of the Swami and there is no mention of the mutt and in others the word "Mutt" is appended. It was argued that the properties were the personal properties of the head, but the argument was not seriously pressed. It was recognized that the Swami took the properties burdened with obligations to devote the income to the purposes for which the institution was founded and was precluded from alienating the corpus, but it is said that he is not a trustee either express or constructive so as to fall under section 92, Civil Procedure Code. I very much doubt, and in fact I am not prepared to hold on the evidence, that he is an express trustee of any of the properties. That the properties or some of them belong to the mutt there can be, I think, no question. The matter was considered by WALLIS, C.J., and HANNAY, J., in Appeal No. 321 of 1912 (Exhibit A), and they held that at least some of the properties belonged to the mutt and that there was evidence that the income derived from the properties was solely employed for religious, public, and charitable purposes. Assuming then that some of

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the properties in question were mutt properties, what is the position of the head with regard to them? This had led to an argument on the whole question as to whether the head is or is not a trustee. I proceed to state the inferences I draw from the principal cases on the point. There is no need to go into the history of these mutts in Southern India. This has been done in *Sambandha Pandara Sannadhi* v. *Kandasami Thambiran*(1) and is recapitulated in the referring judgments of MUNRO and ABDUR RAHIM, JJ., in *Kailasam Pillai* v. *Nataraja Tambiran*(2). In *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami*(3) the head of a mutt was said to be a tenant for life of the corpus with full powers over the income. He had powers to alienate the corpus for purposes necessary for the maintenance of a mutt. He was a corporation sole and consequently he did not forfeit his office through lunacy. He was not a trustee in the sense understood in the law of trusts. In the opinion of BHASHYAM AYYANGAR, J., the principles of English Law as to appointments of new trustees are inapplicable to the case of hereditary trustees in India and other trustees having a beneficial interest in the mutt properties as in the case of the head of a mutt. This decision, though not overruled (and it was no doubt correct in its conclusions) has been criticised in *Vidyavaruthi* v. *Balusami Ayyar*(4) by the Privy Council. Beyond the opinion that a head of a mutt is not a trustee in the English Law sense, we do not derive much guidance from this decision in the present case. The next case was *Kailasam Pillai* v. *Nataraja Tambiran* (2); there the referring Bench thought the swami was a trustee vested with a wide discretion as to the mode in which to apply its profits and receipts for the upkeep

(1) (1887) I.L.R., 10 Mad., 375.
(2) (1910) I.L.R., 33 Mad., 265 (F.B.).
(3) (1904) I.L.R., 27 Mad., 435.
(4) (1921) I.L.R., 44 Mad., 831 (P.C.).

of the institution, relying on *Sammantha Pandara* v. *Sellappa Chetty*(1). As they opined that this was at variance with *Vidyapurna Thirthaswami* v. *Vidyanidhi Thirthaswami* (2) they referred to the Full Bench the question whether the head of a mutt holds its properties as a life tenant or a trustee. The Full Bench held that there could be no categorical answer to this question, each case depending on the conditions on which the properties were given or which may be inferred from the long-continued and well-established usage and custom of the institution. WALLIS, J., said, at page 279:

"In the present case it seems to me that gifts made to heads of mutts without any mention of the purposes to which they were to be applied cannot be considered to have been given upon trust for charitable purposes." . . . "Further in my opinion where gifts were given to heads of mutts without any specific trust the inference suggested by the circumstances of the case and by usage is that it was not intended to fetter the donees by any trusts in dealing with the gifts or to make them accountable in a Court of law for their manner of dealing with them. The ascetic character of the donees and the great reverence in which they were held would, I think, have rendered such restrictions in the eyes of the donors both unnecessary and unbecoming. The fact that the heads of mutts have more or less frequently abused their position is not of itself a sufficient reason for treating them as trustees of mutt endowments."

The case *Kailasam Pillai* v. *Nataraja Thambiran*(3) went to the Privy Council after remand which was disposed of in *Kailasam Pillai* v. *Nataraja Thambiran*(4).

This comprised two suits, Appeal 317, for a declaration that there was no lawful trustee of the Tiruvannamalai Mutt and Devasthanams and another, Appeal 318, sought for a declaration only in respect of the devasthanam. The reason for filing the two

(1) (1878) I.L.R., 2 Mad., 175.
(2) (1904) I.L.R., 27 Mad., 435.
(3) (1910) I.L.R., 33 Mad., 265 (F.B.).
(4) (1917) 32 M.L.J., 271.

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suits was that it was considered doubtful if the head of the mutt was a trustee under section 539, Civil Procedure Code. The District Judge held that the head was not a trustee and no suit lay for his removal under section 539. An attempt was made on the appeal to show that the Full Bench decision was wrong as opposed to *Ram Parkash Das* v. *Anand Das*(1) but the Court held that they were bound by the Full Bench decision and accordingly agreed with the learned Judge and dismissed the suit so far as it related to the head of the mutt and its endowments.

The appeal to the Privy Council is reported in *Nataraja Thambiran* v. *Kailasam Pillai*(2). The relevant portion of their Lordships' judgment is on page 288 and runs as follows:—

"The trial Judge found in Suit No. 1 of 1905 that there was no evidence to show that the head of the mutt was a trustee of the mutt or of its properties, and by his decree dismissed the suit. The trial Judge apparently considered that, so far as that suit was concerned, it was not necessary to find whether Nataraja was a trustee of the devasthanams and the properties with which they were endowed; that decree in Suit No. 1 of 1905 was appealed to the High Court, and neither on that appeal, nor in these consolidated appeals, was any attempt made to challenge the correctness of the finding of the trial Judge in Suit No. 1 of 1905, that there was no evidence to show that the head of the mutt was a trustee of the mutt or its properties."

In *Muthusamiyer* v. *Sree Sreemethanithi Swamiar*(3) MILLER, J., held that the corpus was inalienable, but that the income was at the disposal of the swami subject only to the upkeep of the mutt. There may be properties vested in him as trustee.

In *Balaswamy Ayyar* v. *Venkataswamy Naiken*(4) a case on article 134 of the Limitation Act, 1908, SADASIVA AYYAR and BURN, JJ., following the Privy

(1) (1916) I.L.R., 43 Calc., 707 (P.C.). (2) (1921) I.L.R., 44 Mad., 283 (P.C.).
(3) (1915) I.L.R., 38 Mad., 356. (4) (1917) I.L.R., 40 Mad., 745.

Council in *Ram Prakash Das* v. *Anand Das*(1), held that the head of a mutt was a trustee of the mutt properties. The Calcutta case was the case of a Mahant and their Lordships say:

"The Mahant, in their Lordships' opinion, is not only a spiritual preceptor but also a trustee in respect of the asthal over which he presides."

Again,

"The whole assets are vested in him as the owner thereof in trust for the institution itself"

And again

"The nature of the ownership is, as has been said, an ownership in trust for the mutt or institution itself, and it must not be forgotten that although large administrative powers are undoubtedly vested in the reigning mahant, this trust does exist, and that it must be respected" (page 714).

This case went on appeal to the Privy Council in *Vidya Varuthi* v. *Balusami Ayyar*(2). There was no question of a specific trust in the case and the Privy Council held that article 134 only relates to a specific trust and to property "conveyed in trust to a trustee." Their Lordships explained the use of the words "trust" and the "trustee" in the passage quoted above.

"They used the term 'trustee' in a general sense, as in previous decisions of the Board, by way of a compendious expression to convey a general conception of these obligations," i.e., "the duties and obligations attached to the office of a superior."

Again they say,

"These men (heads of mutts) had and have ample discretion in the application of the funds of the institution but always subject to certain obligations and duties, equally governed by custom and usage." "In no case was the property conveyed to be vested in him (head) nor is he a trustee in the English sense of the term though in view of the obligations and duties vesting in him, he is answerable as a trustee in the general sense for maladministration."

(1) (1916) I.L.R., 43 Calc., 707 (P.C.). (2) (1921) I.L.R., 44 Mad., 831 (P.C.).

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In refusing to adopt the authority for their present purpose of *Dattagiri* v. *Dattatraya*(1), their Lordships also said

"It seems to their Lordships that the distinction between a specific trust and a trust for general pious and religious purposes under the Hindu and Muhammadan Law was overlooked and the case was decided on analogies drawn from English Law inapplicable in the main to Hindu and Muhammadan institutions."

This is the latest pronouncement of the Privy Council and, with the exception of one other case to be mentioned hereafter, that concludes my examination of the law on the present point. It seems to me that their Lordships in *Vidya Varuthi* v. *Balusami Ayyar*(2), do recognize that the head of a mutt may be answerable as a trustee "in a general sense" for maladministration and that he has to administer a trust for general pious and religious purposes in view of the duties and obligations attached to his office. If these are not merely voluntary, viz., if the head is bound to carry them out, it seems to me that he must be answerable if he does not, notwithstanding that he may have a very wide discretion as to the application of the mutt funds and other properties for this purpose. If the public or a portion thereof are interested in the performance of these duties and obligations which are or ought to be employed at least as to some part of them in the maintenance of a public and religious and charitable endowment (see Exhibit A) the only way the public can interfere is by a suit under section 92, Civil Procedure Code. I am by no means convinced that "any express or constructive trust" in section 92 is confined to what may be called the English Law sense, at all events as regards the words "constructive trust." It seems to me to mean more than an express or specific trustee taking advantage

(1903) I.L.R., 27 Bom., 363. (2) (1921) I.L.R., 44 Mad., 831 (P.C.).

of his position as such, e.g., to grant leases in his own name or to make profits by means of unauthorized investments of trust property. It embraces, I think, all cases where the property is used for the purposes described subject to duties and obligations as stated by the Privy Council and a head of a mutt is one of these cases. The matter is well summed up by the learned author of the latest edition of Mr. Mayne's work (our present Chief Justice), at page 627. After pointing out that the head of a mutt is not a trustee (which I take to mean a trustee in the English Law sense as pointed out by the Privy Council) except with regard to specific trusts he says,

> "He may have obligations similar to those of a trustee, he will almost invariably be under a legal obligation to support his disciples and perform the usual ceremonies."

The last case I desire to refer to is *Shripatprasad* v. *Lakshmidas*(1). Mr. AMIR ALI in giving the judgment of the Privy Council in *Vidya Varuthi* v. *Balusami Ayyar*(2), said that the mutts of Southern India corresponded with and their general characteristics were almost identical with similar institutions in Northern India and Bombay. The 25 Bom. L.R. case concerned an Acharya, who, as in the case before us, was bound to be a married man. PRATT, J., assumes that the institution involved resembled a mutt and examined the Privy Council cases on the subject which have been reviewed above. He held that *Vidya Varuthi* v. *Balusami Ayyar*(2), did not relate to moral obligations only but only obligations in their usual sense as used in a Court of Law and read the words "constructive trustee" in section 92 as including a person holding a particular fiduciary position whose doings as such can be enforced in a Court of

(1) (1923) 25 Bom. L.R., 747. (2) (1921) I.L.R., 44 Mad., 831 (P.C.).

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Law. This would include Mahants, Shebaits, Muttuvallies, as their fiduciary positions

"would be that of a manager or custodian of properties held for public purposes of a charitable and religious nature."

PRATT, J., also held that *Vidya Varuthi* v. *Balusami Ayyar*(1), lent no support to the contention that spiritual head of a mutt does not occupy a fiduciary position and is not liable to suit under section 92.

The appeal therefore fails and must be dismissed with costs.

JACKSON, J.

JACKSON, J.—In this appeal it is admitted on behalf of the appellants that the plaintiffs are not barred by limitation, and on behalf of respondents that 1st defendant was not estopped, and therefore the sole question for determination is whether the Parasamaya Kolarinatha Matam is an express or constructive trust created for public purposes of a charitable or religious nature within the terms of section 92 of the Code of Civil Procedure.

This mutt is described in paragraph 8 of the lower Court's judgment. It is the duty of the head of the mutt or Swami to perform its ceremonies and to give Upadesam and religious instruction to its disciples. It is proved by Exhibit G that a gift was made to the mutt before 1779. Certain pattas stand in the name of the mutt or of its spiritual head. Exhibit E to Exhibit E-8, Exhibit F. The buildings have been repaired by public subscription, Exhibit PP, and admittedly subscriptions are collected from the supporters of the mutt which has a wide spiritual jurisdiction over the south of this Presidency, Cochin and Travancore.

I do not think, nor indeed was it argued that an institution of this character differs materially from the mutt of Northern India described in *Ram Parkash Das* v.

(1) (1921) I.L.R., 44 Mad., 831 (P.C.).

Anand Das(1). No doubt succession in that mutt is by selected disciples, and in this mutt, where the head is not celibate, through father and son, but the difference is not material. Again the Patharakudi Mutt, described in *Arunachellam Chetty* v. *Venkatachalapathi Guruswamigal*(2), appears to be similar in all essentials to the mutt of this suit.

In regard to each of these mutts, the Judicial Committee has laid it down as a general rule that the head holds the property as the owner thereof in trust for the institution itself, admitting however that in some cases it may be proved that the property is held on different conditions; *Arunachellam Chetty* v. *Venkatachalapathi Guruswamigal*(2). This in terms reaffirms the decision in *Sammantha Pandara* v. *Sellappa Chetti*(3) which is repeated in *Sambandha Pandara Sannadhi* v. *Kandasami Tambiran*(4) :—

"The ascetic . . . came to own the matam in trust for the maintenance of the mutt."

Against this position the appellants direct a double attack, contending (1) that the Judicial Committee has negatived these pronouncements in *Vidya Varuthi* v. *Balusami Ayyar*(5), (2) that the true proposition of law is to be found in the group of cases, *Vidyapurna Tirtha-Swami* v. *Vidyanidhi Tirtha Swami*(6), *Kailasam Pillai* v. *Nataraja Tambiran*(7), and *Kailasam Pillai* v. *Nataraja Tambiran*(8), *Nataraja Thambiran* v. *Kailasam Pillai*(9).

Vidya Varuthi v. *Balusami Ayyar*(5) is an appeal from the judgment of this court reported in 40 Madras, 745, where it was ruled that the head of a mutt held the property simply as a trustee, and that, in as much as alienated property had been possessed adversely to the trustee for more than twelve years,

(1) (1916) I.L.R., 43 Calc., 707, p. 713 (P.C.).
(2) (1920) I.L.R., 43 Mad., 253 (P.C.).
(3) (1879) I.L.R., 2 Mad., 175.
(4) (1887) I.L.R., 10 Mad., 375, p. 386
(5) (1921) I.L.R., 44 Mad., p. 831.
(6) (1904) I.L.R., 27 Mad., p. 435.
(7) (1910) I.L.R., 33 Mad., 265 (F.B.).
(8) (1917) 32 M.L.J., 271.
(9) (1921) I.L.R., 44 Mad., 283 (P.C.).

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Article 134, Schedule I, Indian Limitation Act, was applicable to the case. In *Vidya Varuthi* v. *Balusami Ayyar*(1) it is pointed out that the word "trustee" is used in two senses. It may be used in a general sense by way of a compendious expression to convey a general conception of the obligations attached to the office (page 838) or it may be used in the English sense of the term where the property has been "conveyed in trust" (page 843). There is a "distinction between a specific trust and a trust for general pious or religious purposes" (page 849). Trustee in inverted commas in the head-note refers to the first category the specific trust and *Vidya Varuthi* v. *Balusami Ayyar*(1), in no way detracts from the clear authority of *Ram Parkash Das* v. *Anand Das*(2) and *Arunachellam Chetty* v. *Venkatachalapathi Guruswamigal*(3) in regard to the trust for general pious or religious purposes.

For his second attack Mr. Rajah Ayyar takes as his starting point *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami*(4), where it is held that the real and precise jural character of the head of a mutt is that of a corporation sole. He has an estate for life in the permanent endowments of the mutt, and an absolute property in the income, subject only to the burden of maintaining the institution. He cannot alienate the corpus of the endowment or the income beyond his own lifetime except for purposes plainly necessary for the maintenance of the mutt. The property is like the benefice of a bishopric of the Christian Church. The learned Judges who laid down this proposition do not seem to have been aware that they were traversing *Sammantha Pandara* v. *Sellappa Chetti*(5) and *Sambandha Pandara Sannadhi* v. *Kandasami Tambiran*(6), which

(1) (1921) I.L.R., 44 Mad., 831 (P.C.). (2) (1916) I.L.R., 43 Calc., 707, 713 (P.C.)
(3) (1920) I.L.R., 43 Mad, 253 (P.C.). (4) (1904) I.L.R., 27 Mad., 435.
(5) (1879) I.L.R., 2 Mad., 175. (6) (1887) I.L.R., 10 Mad., 375.

are only referred to as authority for the definition of a mutt, not as authority for the proposition that the head of a mutt is a trustee (no doubt they both in similar language, decline to follow *Sammantha Pandara* v. *Sellappa Chetti*(1) in holding that a debt incurred by the head for proper purposes is binding on his successor, but that is a different matter). It remained for the referring Judges in *Kailasam Pillai* v. *Nataraja Thambiran*(2), to perceive that 27 Madras in denying that the head of a mutt was a trustee, was opposed to 2 Madras and 10 Madras. Accordingly they put this question before a Full Bench: Does the head of a mutt hold the properties constituting its endowments as a life tenant or as a trustee? The Officiating Chief Justice held that the purposes for which the head of the mutt holds the mutt and its endowments in trust are the maintenance of the mutt, the support of its head and of its disciples and the performance of religious and other charities in connection with it according to usage. And it was only after defraying the established charges of the institution that the head of a mutt could be said in regard to the surplus, to be restricted merely by a moral obligation. It cannot be predicated that the head of a mutt as such holds the properties constituting its endowments as a life-tenant or as a trustee. The incidents attaching to the properties depend in each case upon the conditions on which they were given or which may be inferred from the long-continued and well-established usage and custom of the institution in respect thereto.

It may be remarked here that if usage establishes as a trust the obligation of maintaining a mutt, supporting its head and disciples and performing religious and other charities, small room is left for any other form of tenure regulated only by moral obligation. WALLIS, J.,

(1) (1879) I.L.R., 2 Mad., 175. (2) (1910) I L.R., 33 Mad., 265(F.B.).

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endorsed the opinion of the Officiating Chief Justice. He also agreed with the decision in 27 Madras as to the position of the head of a mutt with regard to the mutt properties, and held that he cannot be regarded as a trustee of the mutt endowments, except in so far as it may be shown that any particular endowment was granted to him on trust. That the learned Judge would allow a trust to be inferred from long-established usage and practice can only be gathered from his opening sentence that he agrees with the Officiating Chief Justice. SANKARAN NAYAR, J., in regard to property which was generally devoted to the institution to be enjoyed by a Pandara Sannadhi and his successors, held that there was no trust. But each head of the mutt must pass on the property unencumbered and unalienated. The disciples are entitled to be maintained out of the income and as regards any surplus the Pandara Sannadhi has an unfettered discretion. In such cases, there is no trust. He may be trustee in regard to specified properties and he is under a legal obligation (not *qua* trustee) to maintain the mutt and to support its disciples. He is not a trustee, in the absence of evidence to the contrary and he is not a life-tenant. The referring Judges took the reply to their question to be that in the absence of evidence to the contrary the head of a mutt is not a trustee *Kailasam Pillai* v. *Nataraja Tambiran*(1). Accordingly they remanded the suit and the District Judge found that there was no evidence to show that the head of the mutt was a trustee. On appeal it was not contended that there was such evidence; but the Appellate Court was asked and declined to reconsider the question of law in the light of *Ram Parkash Das* v. *Anand Das*(2). Therefore when the case reached the Privy Council there was a concurrent finding of fact that in this mutt there was no evidence that its head held as trustee and the Judicial

(1) (1917) 32 M.L.J., 271. (2) (1916) I.L.R., 43 Calc., 707 (P.C.).

Committee left that finding undisturbed, *Nataraja Thambiran* v. *Kailasam Pillai*(1). It must be remembered that as early as 1879 this Court declined to treat mutts as all coming under the same description. In some cases the property may be held on different conditions and subject to different incidents *Sammantha Pandara* v. *Sellappa Chetti*(2), and this was approved in *Arunachelam Chetty* v. *Venkatachalapathi Guruswamigal*(3). Therefore before the Privy Council there was no occasion to dispute the finding of fact on general grounds as being opposed to the recognized definition of a mutt; because it has always been held that apart from the facts the word mutt has no special connotation.

The circumstances of this case as detailed above cannot be held to warrant the appellant's plea that they detract from the clear authority of *Ram Parkash Das* v. *Anand Das*(4), and in *Vidya Varuthi* v. *Balusami Ayyar* (5), the Judicial Committee has itself condemned the attempt to compare the head of a mutt with a beneficed clergyman of the Church of England. This group of cases clustered round *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami*(6), can only be regarded as an episode standing apart the main course of judicial decision from *Sammantha Pandara* v. *Sellappa Chetti*(2), to *Arunachellam Chetty* v. *Venkatachalapathi Guruswamigal*(3).

I therefore agree that the Parasamaya Kolarinatha Matam is a constructive trust as contemplated by section 92 of the Code of Civil Procedure, and this appeal must be dismissed with costs.

K.R.

(1) (1921) I.L.R., 44 Mad., 283 (P.C.). (2) (1879) I.L.R., 2 Mad., 175.
(3) (1920) I.L.R., 43 Mad., 253 (P.C.). (4) (1916) I.L.R., 43 Calc., 707 (P.C.).
(5) (1921) I.L.R., 44 Mad., 831 at 839 (P.C.).
(6) (1904) I.L.R., 27 Mad., 435.