APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Devadoss.

1927, January 3.

P. RAMA AYYAR (1ST DEFENDANT), APPELLANT,

v.

T. R. SIVAGNANAM PILLAI AND OTHERS (PLAINTIFFS 1 AND 2, 2ND DEFENDANT AND ADDITIONAL RESPONDENTS), RESPONDENTS.*

Temple committee—Appointment of additional trustees to a temple, or dismissal of a trustee, made by the committee at a meeting—Notice convening the meeting of the committee—Essentials of notice—Notice to specify what subjects will be taken up at the meeting—Omission to specify the subject in the notice, effect of—Appointment of additional trustees, though notice did not specify the subject—Appointment, validity of.

An appointment of additional trustees to a temple, or a dismissal of a trustee of a temple, made by a temple committee at a meeting, will be invalid, unless the notice convening the meeting specified that the subject of the appointment of additional trustees or the dismissal of a trustee would be taken up at the meeting.

Young v. *Ladies Imperial Club*, [1920] 2 K.B., 523, applied.

A temple committee is not a select body like the Directors of a Company, a Bank or a Corporation, in regard to whom a notice of their meeting specifying the subject to be taken up at such meeting, need not be given, as laid down in *La Compagnie de Mayville* v. *Whitley*, [1896] 1 Ch., 788, and *Rex* v. *Pulsford*, (1828) 8 B. & C., 350.

APPEAL against the decree of C. V. KRISHNASWAMI AYYAR, Subordinate Judge of Tuticorin, in Original Suit No. 39 of 1922.

* Appeal No. 392 of 1923.

Two of the trustees of a temple sued for a declaration and an injunction as against the two additional trustees appointed by a temple committee at a meeting convened under a notice which did not specify that the subject of appointment of additional trustees would be taken up at the meeting. Three out of the seven members of the committee were present at the meeting, and appointed the first and second defendants as additional trustees. The third defendant was the third of the original trustees along with the two plaintiffs. The two additional trustees interfered with the management of the temple and its properties. Thereupon the plaintiffs instituted this suit, impeaching the validity of their appointment on the ground, among others, that the notice convening the meeting of the committee did not specify that the subject of appointment of additional trustees would be taken up at the meeting. The Subordinate Judge held that the appointment of additional trustees was invalid on this ground and granted a decree for the declaration and the injunction prayed for in the plaint. The first defendant, one of the additional trustees, preferred this appeal.

T. M. Ramaswami Ayyar for appellant.

A. Krishnaswami Ayyar for respondents.

JUDGMENT.

KUMARASWAMI SASTRI, J.—This appeal arises out of a suit filed by two of the trustees of Sree Sankaranarayanaswami temple at Sankaranayinarkoil for a declaration that the appointment by the temple committee of the two additional trustees is invalid. The ground on which the Subordinate Judge decreed the plaintiff's suit was that proper notice of the subject before the meeting which eventually appointed the additional trustees, was not given to the members of

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the temple committee. They were not informed that at that meeting they were going to consider the question of the dismissal of one trustee and appoint two other additional trustees, and consequently the appointment was invalid. There were seven members of the temple committee and at the meeting in question when the additional trustees were appointed only three were present, and these gentlemen appointed the appellant and another as additional trustees. It is conceded that the temple committee has power to appoint additional trustees. Both the plaintiff's second and third witnesses admit this power and it is not questioned before us. The only question is whether a proper notice convening the meeting was given to the members of the temple committee that at that particular meeting to be held this subject was going to be taken, namely, the appointment of the two additional trustees. There is no doubt that if in the agenda before the meeting this subject was mentioned there could be no valid objection by the other members of the temple committee to the proceedings of the meeting and the appointment of the additional trustees. The notices of the meeting are Exhibits L and M. Exhibit M, dated 23rd December 1920, is a notice calling for a special meeting on the 28th December 1920 at 2 p.m. All that is said in Exhibit M is that the meeting will be held for the two matters which were mentioned there (not relating to the temple) and also to dispose of the subjects which were left undisposed of in the previous meeting. Exhibit L is dated the 16th December 1920 and the notice is as follows:—

"I beg to inform you that in addition to the papers referred to in the arzi sent yesterday fixing the usual meeting for the 18th and 19th instants the papers connected with the reference in respect of Sankaralingaswamikoil in kasba Sankaranayinarkoil are included among the subjects as per resolution prior to the said meeting."

As seen above Exhibit M does not as regards this temple say anything more than that the subjects left undisposed of in the previous meeting would be taken into consideration. The question is whether Exhibit L is a sufficient notice that at a meeting of the temple committee new additional trustees are to be appointed? Before dealing with this question it is necessary to refer to some facts which took place before.

It appears there were three trustees to this temple and one of them was N. A. V. Somasundaram Pillai, a vakil of Tinnevelly Court. There was disagreement between him and the first trustee. The second trustee sometimes sided N. A. V. Somasundaram Pillai and sometimes sided the other. Further it is alleged that N. A. V. Somasundaram Pillai was acting highhandedly and was in possession of more than a lakh and sixty thousand rupees and did not account for the same to the committee in spite of repeated notices. The temple committee tried to get the accounts from him but could not succeed and the President of the committee requested one Nelliyappa Pillai to go into the matter fully and submit a report. He submitted a report Exhibit N-1, in which he said that there was disagreement between the trustees and that though there was no misappropriation by N. A. V. Somasundaram Pillai it was impossible for the trustees to get on amicably and finally suggested that additional trustees might be appointed. In addition to this there were mahazars sent by a Sabah formed to protect the interests of this temple which suggested the appointment of additional trustees and Exhibit XIV is one such mahazar, dated the 25th December 1920, and this suggested the name of the appellant as the fit person to be appointed as a trustee. The position as appeared from Exhibits J, XIII, K-1, N, X-1, WW, N-1 and XIV was that the temple committee

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found the affairs of this temple in a very unsatisfactory state. Large amounts were spent for repairs for which there was no proper account kept and attempts to get the correct accounts proved ineffective. Further there were complaints made by the worshippers that the temple affairs were not properly managed and there was the suggestion of Nelliyappa Pillai that additional trustees should be appointed. The fact that the temple affairs were in a very unsatisfactory state seems to have been conceded by everybody but the cause of it was not ascertained or fixed and the remedy was not clearly suggested until we come to Exhibit N-1, the report of Nelliyappa Pillai. Exhibit L speaks of the papers connected with the reference in respect of Sankaralingaswamikoil, and what that means is spoken to by defendants' first witness. He says that referred papers, according to him, meant the papers referred to the members of the committee for opinion. According to the first witness for the plaintiff, by "refer case", he understood, the papers relating to the conduct of N. A. V. Somasundaram Pillai. So far as we can see, Exhibit L generally says that all the papers connected with the reference in respect of Sankaralingaswamikoil are included among the subjects. It does not state specifically what subjects are going to be discussed at that meeting nor does it in any way suggest that new additional trustees are going to be appointed. The evidence on the side of the plaintiffs is that the members of the committee did not think and had no reason to believe that at that meeting additional trustees were going to be appointed. Exhibit L by itself gives no indication of the fact that additional trustees are going to be appointed. All that it says is that the affairs of the temple will be taken into consideration at that meeting. We do not think that is a sufficient

notice for the appointment of additional trustees. It is argued by the learned vakil for the appellant that no notice of the subjects to be taken at the committee is necessary in the case of temple committees and he bases his argument on the ground that the temple committee is a special body and has powers to dispose of the work before it irrespective of any notice or anything of such a nature. He says that the present case is analagous to proceedings by directors of companies, and cites the decision in *Rex* v. *Pulsford*(1) which was approved and followed in *La Compagnie de Mayville* v. *Whitley*(2). The decision in the latter case is to the effect that in the case of a company it is not necessary in the notice convening the meeting of the directors to state what the business to be transacted at that meeting is to be. LINDLEY, L.J., observes at page 797 as follows:—

"The great point is whether, when a directors' meeting is to be held, it is necessary to give a notice not only of the meeting, but of the business to be transacted at the meeting. I am not prepared to say as a matter of law that it is necessary. As a matter of prudence it is very often done, and it is a wise thing to do it; but it strikes me, as it struck Lord TENTERDEN in *Rex* v. *Pulsford*, that there is an immense difference between meetings of *shareholders* or corporators and meetings of those whose business it is to attend to the transactions of the affairs of the company or corporation. It is not uncommon for directors conducting a company's business to meet on stated days without any previous notice being given either of the day or of what they are going to do. Being paid for their services—as they generally are and as is the case in this company—it is their duty to go when there is any business to be done and to attend to that business whatever it is; and I cannot now say for the first time that as a matter of law the business conducted at a directors' meeting is invalid if the directors have had no notice of the kind of business which is to come before them. Such a rule would be extremely embarrassing in the transaction of the business of companies."

(1) (1828) 8 B. & C., 350. (2) [1896] 1 Ch., 788.

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Then he refers to *Rex* v. *Pulsford*(1) and the observation of LORD TENTERDEN in that case. Reference is also made by the learned vakil for the appellant to *Raza* v. *Ali*(2) where the question was as to the election of a Muttawalli. Justice SESHAGIRI AYYAR was of opinion that there was a distinction to be drawn between a committee consisting of a definite number and a body composed of an indefinite number of persons, the distinction being in the first case the number of the select body is fixed and in the other case the number of members is subject to fluctuation. The observation of the learned Judge hardly covers a case like the present. A body is not necessarily a select body, because its members are fixed; to bring the case within the rule in *Rex* v. *Pulsford*(1) and *La Compagnie de Mayville* v. *Whitley*(3), a smaller executive body should be appointed by a larger body for the purpose of carrying on its internal management. The larger body may be fixed as much as the select body. But it does not follow that because a body is fixed it becomes a select body so as to dispose of any matter without notice of the meetings or without the subjects being mentioned in the agenda. In the case of temple committees no doubt the body is a fixed body in the sense that its members are not subject to fluctuation from time to time, as in the case of an electorate but there is hardly any analogy between the directors of a bank or corporation or company the members of which are appointed by the general body of shareholders for carrying on the internal affairs and the members of a temple committee who are elected by the worshippers and appointed to supervise the affairs of the temple. We think that it will be against all principle and utterly detrimental to the proper management of temples to hold

(1) (1828) 8 B. & C., 350. (2) (1917) I.L.R., 40 Mad., 941.
(3) [1896] 1 Ch., 788.

that a temple committee without any proper notice to the members of the committee, can convene a meeting without giving in the notice convening it any particulars as to the business to be done at the meeting and that it can take up any question it likes without previous notice so as to make it binding upon the whole committee. To hold that an important matter like the dismissal of a trustee or the appointment of additional trustees could be disposed of without any notice to the other members of the committee would be a very dangerous proposition to be laid down. We think the present case comes within the decision in *Young* v. *Ladies Imperial Club*(1). When a notice is required in law it is clear that such notice has to give reasonable particulars as to the business to be transacted at that meeting. In this case the subject to be transacted at the meeting was stated as follows :—

"To report on and discuss the matters concerning Mrs. Young and Mrs. Lawrence"

and it was held that this notice was insufficient. It was held by Lord STERNDALE, M.R., and WARRINGTON, L.J., that this notice was insufficient. WARRINGTON, L.J., observes :

"To my mind that notice was not sufficient notice. The meeting convened in accordance with it was not a meeting specially convened for the purpose of considering a particular thing, namely, whether or not Mrs. Young should be recommended to resign."

In the present case the appointment of additional trustees to the temple is a matter of great importance and this should not have been done without proper notice to the members of the committee. We think that the Subordinate Judge was right in holding the appointment of additional trustees as invalid as the notice of

(1) [1920] 2 K.B., 523.

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the meeting in which the appointments were made did not state that this was the subject to be taken into consideration. The appeal fails and is dismissed with costs.

As regards the memorandum of objections we do not think sufficient cause is shown to interfere with the order of the Subordinate Judge as regards costs, regard being had to the unsatisfactory state of affairs in this temple.

K.R.

APPELLATE CIVIL.

1927, May 6.

Before Mr. Justice Devadoss and Mr. Justice Jackson.

JAGANNATHA PILLAI AND 2 OTHERS (SOME LEGAL REPRESENTATIVES OF THE DECEASED 1ST DEFENDANT), APPELLANTS,

v.

KATHAPERUMAL PILLAI AND 10 OTHERS (PLAINTIFFS NOS. 2, 3 AND 4, DEFENDANTS NOS. 2, 3 AND 4 AND OTHER LEGAL REPRESENTATIVES OF THE 1ST DEFENDANT), RESPONDENTS.*

Madras Estates Land Act (I of 1908), sec. 192—Civil suit to set aside rent—Sale on the ground of fraud and material irregularity in the sale—Maintainability of.

A suit in a Civil Court to set aside a sale held in execution of a rent decree under the Madras Estates Land Act (I of 1908) on the ground of fraud and material irregularity in publishing and conducting it is not barred either expressly or impliedly by the Madras Estates Land Act.

Observations in *Jagannadha Charyulu* v. *Satyanarayana Varaprasada Rau*, (1920) I.L.R., 43 Mad., 351, dissented from.

SECOND APPEAL against the decree of K. KRISHNAMA ACHARIYAR, Subordinate Judge of Sivaganga, in A.S. No. 115 of 1921, preferred against the decree of

* Second Appeal No. 1044 of 1924.