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Had they done so, and had the Judge refused to accede to the application, we should probably have given a decided ruling to guide the Court in the future when dealing with these rules. The Municipality were apparently contented to take the decision of the Small Cause Court Judge on the construction of their rather ambiguously worded rules, and when he decided against them without their having asked for a case, they cannot, we think, complain that the High Court does not exercise its extraordinary powers to assist them.

In the second place, the defendants have no merits on their side. According to the finding of the Small Cause Court, which has not been challenged, and which there is no reason to distrust, the goods imported into Poona in this case have actually become the property of Government, and the plaintiff is on the merits entitled to the refund which he has obtained, though from the certificate alone he may not be able to prove his right, and he has not taken the precautions which entitle exporters under Rules 14 to 17, inclusive, to a refund. We discharge the rule with costs.

Rule discharged.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. *November* 25.

SAYAD HUSSEIN MIYAN DA'DA MIYAN AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* THE COLLECTOR OF KAIRA (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), *Sec.* 539—*Sanction—Court cannot grant reliefs outside the sanction.*

When sanction is given to the institution of a suit under section 539 of the Code of Civil Procedure (Act XIV of 1882) the suit must be limited to matters included in the sanction. It is not competent to the Court to enlarge the scope of the suit and grant reliefs other than those included in the terms of the sanction.

APPEALS from the decision of Dayarám Gidumal, Joint Judge of Ahmedabad, in Suit No. 19 of 1891.

This was a suit filed by the Collector of Kaira under section 539 of the Code of Civil Procedure (Act XIV of 1882).

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The suit was instituted with the sanction of the Local Government, which by a Resolution of the Judicial Department, No. 1522, dated 13th March, 1891, directed the Collector "to move the District Court to appoint new trustees for the administration of the trust funds, and to settle a scheme for their management."

A Jain widow named Mánekbái, of Kapadvanj, died in 1876, possessed of considerable moveable and immoveable property; she left a will by which she created several public religious and charitable trusts. In 1886 defendants Nos. 1 and 2 were appointed administrators of her estate, under Regulation VIII of 1827.

The plaint stated that some of the trusts were such as could not be satisfactorily carried out by defendant No. 1, who was a Mahomedan, and that in view of section 22 of Act XX of 1863, the appointment of the defendant No. 2, who was názir of the Subordinate Judge's Court at Kapadvanj, was objectionable.

The plaintiff, therefore, prayed that the defendants Nos. 1 and 2 should be removed and new trustees appointed, that a scheme of administration should be settled by and under the direction of the Court, and such relief granted as the Court might deem fit.

Defendant No. 1 did not contest the suit; he expressed his willingness to abide by the Court's orders.

Defendant No. 2 asked to be made a plaintiff and made serious allegations of misappropriation, not only against the former administrators of the estate,—Nihálchand (since deceased) and Chhotálál,—but also against Amratbái, the mother and legal representative of Nihálchand. He asked that these persons should be added as defendants, and made to account for the trust funds in their hands.

The District Court accordingly added Amratbái and Chhotálál as defendants Nos. 3 and 4, respectively.

The Joint Judge found that defendants Nos. 1 and 2 were unfit to administer the religious and charitable trusts created by Mánekbái's will; that the former trustees, Nihálchand and Chhotálál, had been guilty of gross negligence and had committed several breaches of trust for which they were responsible to the trust estate. He, therefore, passed a decree directing defendants Nos. 1 and 2 to be removed, and new trustees appointed in their stead.

He framed a scheme for the future administration of the trust, and ordered defendants Nos. 3 and 4 to render an account of the trust funds in their hands and make good the losses sustained by the charity in consequence of their default.

Against this decree defendants Nos. 1 and 3 made a joint appeal (No. 68 of 1894) to the High Court.

Defendant No. 4 preferred a separate appeal (No. 103 of 1894).

Scott (with him *Govardhan M. Tripathi*) for appellants in Appeal No. 68 of 1894.

Gokaldás K. Párakh for appellant in Appeal No. 103 of 1894.

Ráo Sáheb *Vásudev J. Kirtikar*, Government Pleader, for the respondent in both the appeals.

A preliminary objection was taken that this suit did not fall within section 539 of the Civil Procedure Code (Act XIV of 1882) and that the District Court had no jurisdiction to hear it. The High Court overruled the objection (see *ante*, p. 48), and the appeal now came on for hearing on the merits.

Scott :—The sanction given to the Collector by Government was of a limited character, and did not include the question as to the removal of trustees or the account and refund. The relief granted by the lower Court as against Amratbái was, therefore, unwarranted by the sanction and *ultra vires* of the District Court under section 539 of the Civil Procedure Code —*Trimcumdáss* v. *Khimji Vallabhdass*[1].

The case started by defendant No. 2 is quite independent of the sanction and ought not to have been included in a suit brought expressly under the sanction. Amratbái had no notice that she was to be made liable to account. The plaint here does not ask inquiry into the conduct of the trustees or for accounts to be taken —*Rendall* v. *Blair*[2]; *The Attorney General* v. *Earl of Devon*[3]; *Strickland* v. *Weldon*[4].

The claim against Amratbái is also barred by limitation—article 98 of the Limitation Act (XV of 1877). Amratbái is the

(1) I. L. R., 16 Bom., 626.
(2) 45 Ch. D., 139 and 157.
(3) 15 Simon, 193 at p. 262.
(4) 28 Ch. D., 426.

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mother of the deceased trustee, Nihálchand. She succeeded to his property as heir on his death in January, 1883, and remained in management until defendant No. 1 was appointed trustee on 26th June, 1886. It is not alleged that Amratbái herself committed any fraud or waste. It is only for Nihálchand's gross negligence that she is held responsible. The case against her, therefore, does not fall within section 10 of the Limitation Act, and is barred. The suit ought to have been brought within three years from the death of Nihálchand, the trustee (article 98). It was not brought until more than seven years after his death —*Advocate General* v. *Bái Punjábái*(1); *Vishvanáth* v. *Rámbhat*(2); *Augustine* v. *Medlycott*(3); *Sitárám* v. *Lakhmidásji*(4).

Gokaldás K. Párekh for appellant in Appeal No. 103.

Ráo Sáheb *Vásudev J. Kirtikar* for the respondent in both appeals:—The Government is not interested in the case against the defaulting trustees. The suit was brought for the purpose of having a scheme prepared for the future management of the trust fund. The Government is not responsible for the fact that defendant No. 2 intervened and asked the District Court to go into questions which the Government did not include in the sanction. Whatever view the Court may take as to the liability of the trustees, the decree, so far as it grants reliefs that were prayed for by Government, is correct and ought to be confirmed.

JARDINE, J.:—This suit was brought by the Collector of Kaira in the District Court, under section 539 of the Code of Civil Procedure (Act XIV of 1882). The sanction for the suit is Government Resolution No. 1522 of the 13th March, 1891, Judicial Department, which instructs the Collector "to move the District Court to appoint new trustees for the administration of the trust funds referred to and to settle a scheme for their management."

The suit was brought against the existing trustees, defendant No. 1, Sayad Husein Miyan, and defendant No. 2, Amratlál. Defendant No. 1 pleaded that he did not oppose, and submitted himself to the Court. Defendant No. 2 objected to the prayer of

(1) I. L. R., 18 Bom., 551 at p. 566.
(2) I. L. R., 15 Bom., 148.
(3) I. L. R., 15 Mad., 241.
(4) P. J. for 1892, 142.

the plaintiff, urged that Amratbái, mother of a past trustee, Nihálchand, then deceased, had retained property of the trust, and that as actual trustee he wished to sue her for this property (which he did not specify) and for an account, and also that another past trustee, Chhotálál, had been guilty of neglect, and that he wished to sue him for damages therefor. Defendant No. 2 also prayed that for these torts or misfeasances they should both be made defendants in this suit. The District Court passed a decision joining them as defendants, a course advocated by the plaintiff's pleader and objected to by the new defendants Nos. 3 and 4.

Nihálchand died in 1883, and though Amratbái did manage certain funds of the trust after his death as his representative, and although Chhotálál was at one time a trustee, they ceased to be such in June, 1886, when defendants Nos. 1 and 2 were appointed. The suit was filed in 1891. The District Court has made the new defendants liable by its decree.

In the appeals here Mr. Scott contends for Amratbái that this relief should be refused as unwarranted by the sanction, and, therefore, *ultra vires* of the District Court under section 539. Mr. Gokuldás for Chhotálál adopts this argument. Mr. Scott also argues that the claim against Amratbái is barred by limitation under article 98 of Act XV of 1877. Indian cases were cited out of the reports. We called for a second argument in order to have the advantage of a discussion of some analogous Chancery cases on the subject of sanction which seemed to us important.

It is not necessary to consider whether the claim made by defendant No. 2 against defendants Nos. 3 and 4 is one to which section 539 applies, as no question about the forum has been raised here, as in *Vishvanáth* v. *Rámbhát* [1] and *Augustine* v. *Medlycott*[2]. Neither is it necessary to consider the argument raised, but not much pressed by Mr. Scott, that the powers which under section 539 the Collector may exercise are only those under which the Advocate General gives a consent in writing to a suit.

The argument raised was that as the Advocate General had, before section 539 was enacted, a power *ex officio* of instituting

(1) I. L. R. 15 Bom., 148. (2) I. L. R., 15 Mad., 241.

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his own suit, that power was not assigned under the word "conferred". The Government Pleader asked us to read "conferred" as equivalent to "specified". Coming to the Indian authorities on sanction under section 539 we follow the judgment of Parsons, J., in *Tricumdáss* v. *Khimji Fullabhdáss*(1) and hold that the section is mandatory. *Primâ facie*, therefore, the District Court ought not to have allowed the defendant No. 2 to enlarge the scope of the suit so as practically to start a new suit without any regard to the absence of a sanction from the Local Government for that purpose. The suit actually determined is not the same as that for which sanction was accorded. See *Srinivasa* v. *Venkata*(2) on a Judge's sanction under sections 14 and 18 of Act XX of 1863, where the plaintiff omitted to sue for one of the reliefs sanctioned. The claims started by defendant No. 2 are quite unconnected with the suit sanctioned by the Governor in Council to get defendants Nos. 1 and 2 removed and for framing a scheme. If defendant No. 2 had brought a suit at his own risk, all the pleadings would have been different, as Mr. Scott pointed out in his answer—in our opinion a sufficient answer—to the question from this Bench suggested by the remarks of the Lords Justices in *Rendall* v. *Blair*(3) in regard to the absence of express prohibition in section 539 and as to whether it might not be the duty of this Court to allow the Collector to apply for a fresh sanction before the decision of the appeal. This radical difference of the two suits which defendant No. 2 succeeded in raising in the District Court under cover of section 539 from the particular suit sanctioned by the Governor in Council, distinguishes the case from *The Attorney General* v. *Earl of Devon*(4) and *Re Godmanchester Grammar School*(5) which are cited by Tudor as exceptions to the rule about sanction in the Chancery cases where he says: "The Court has, however, been in the habit of receiving petitions without the allowance of the Attorney General upon matters arising out of or having reference to what the Court has before done upon a petition properly signed by him"(6).

(1) I. L. R., 16 Bom., 626.
(2) I. L. R., 11 Mad., 148.
(3) 45 Ch. D., 139.
(4) 15 Simon, 193 at p. 262.
(5) 15 Jur., 833.
(6) Tudor on Ch. Trusts, (3rd Ed.,) 332.

In the paucity of decisions it may be well to consider the reasons for the requirements about sanction which may be inferred from those found in the English decisions. The controlling powers given to the Attorney General in England under the old procedure by information (1) were intended to prevent scandalous suits being brought by individuals about charities in order to make a profit by way of costs. It is the reason for the enactment of section 17 of the Charitable Trusts Act, 1853 (2)—*Braund* v. *Earl of Devon* (3). In *Rendall* v. *Blair* (4) Bowen, L. J., says: "This is a Chancery statute. It was intended to cure the mischief of strangers instituting suits when the Charity Commissioners were the proper persons really to form an opinion on the subject." See also *Strickland* v. *Weldon* (5). The cases about amendment are generally on informations. The amendment required the sanction of the Attorney General—*Attorney General* v. *Fellowes* (6); for otherwise the whole suit, except the introduction, might be changed. A private petition was under his control; and it was for him to say for what objects the case should proceed, and Lord Chancellor Eldon referred the proceedings to him—*Attorney General* v. *Green* (7). In *Attorney General* v. *Wyggeston's Hospital* (8) a similar reference was made where the relators asked for more than he thought them entitled to and in *Attorney General* v. *Corporation of Carlisle* (9), where the interrogatories were too extensive. In *Attorney General* v. *Wright* (10) it was held that he was the only person to make an application on an information, and the relator had no such authority.

Turning to India it is obvious that the requirement of sanction protects trust funds and the trustees also from vexatious suits, as so great an officer as the Advocate General will not sanction suits without inquiry about the motives, the merits, the expense, and such bars as limitation. The Governor in Council will use the same circumspection. Though express prohibitory

(1) Tudor on Ch. Trusts (3rd Ed.), Ch. XII.
(2) Tudor, 3rd Ed., 467.
(3) L. R., 3 Ch., 800.
(4) *Ibid.*, 45 Ch. D., at p. 154.
(5) L. R., 28 Ch. D., 426.
(6) 1 Jac. and W., 254.
(7) 1 Jac. and W., 303.
(8) 16 Beav., 313.
(9) 4 Sim., 275.
(10) 3 Beav., 447.

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words are not used in section 539, as in the enactment before their Lordships of the Privy Council in *Biseswar Roy* v. *Shoshi Sikar Eswar Roy* (1), the inference clearly is that a sanction from the Governor in Council was required to the enlargement of the suit; and that case is an authority for holding the absence of the sanction for that part of the suit to be a fatal objection to the reliefs so claimed by defendant No. 2 and the plaintiff-Collector. This Court must, therefore, withhold them in the decree which it will pass.

It is not necessary to decide the questions of limitation raised for Amratbái on the findings of the District Court at pages 8 and 9 of its printed judgment, clauses C, E and F. As to the trivial item C, a silver article, this Court may well be silent. As to the other two findings that Amratbái is bound to pay over to the trust certain money that Nihálchand never collected, but might, except for his own negligence, have collected, from debtors, and other money computed as interest which he ought to have paid on money in his hands, I am of opinion that section 10 of Act XV of 1877 does not apply, as these monies were not vested.

I concur in the views expressed in *Sethu* v. *Subramanya* (2) and refer also to *Balwant* v. *Purun* (3). The claim set up by defendant No. 2 was substantially for an account; and it is doubtful whether such a suit would be permitted under the circumstances for mere laches of Nihálchand and no misconduct of hers—*Advocate General* v. *Bái Punjábái* (4). It is unnecessary to say whether the claim is barred by article 98, as urged by Mr. Scott, or whether article 120 applies. But it is clear that such a question of limitation is one which the Governor in Council would have felt bound to consider if the District Court had required the Collector to consult that authority before it allowed the scope of the litigation to be enlarged.

As the Collector allowed defendant No. 2 to urge the enlargement and the defendant No. 2 is not a party here, perhaps the order of the District Court to treat the contention as that of the Collector and to allow defendant No. 2 costs out of the trust funds

(1) I. L. R., 17 Cal., 688.
(2) I. L. R., 11 Mad., 274.
(3) L. R., 10 I. A., 90.
(4) I. L. R., 18 Bom. at p. 566.

may be justified by the *Attorney General* v. *Governors, &c., of Sherborne Grammar School* (1), where the Attorney General was held bound by what he had permitted the relators to urge by their counsel.

The Court dismisses the suit as regards the defendants Nos. 3 and 4, and in other respects confirms the decree. All costs of these appeals to be paid out of the trust monies.

RÁNADE, J. :—The question of jurisdiction has been already disposed of by our interlocutory judgment. Two more preliminary points were argued by Mr. Scott on 25th September, 1895. One of these relates to the limited nature of the sanction, and the other to the question of limitation. It was contended that as the sanction by Government was of a limited character, and did not include the relief about the removal of old trustees, and requiring them to render an account and refund monies, the suit was not maintainable in its enlarged form. It was further urged that the defendants were allowed no opportunity to meet the enlarged case. The old trustees in this case were willing to resign the trust; and the sanction of Government was accordingly applied for, and given for the limited purpose of appointing new trustees, and settling a scheme of administration, and the District Judge's inquiry into other matters, and his judgment thereupon, were *ultra vires*. We think there is considerable force in this contention. There has been no ruling on this part of section 539, but the Madras High Court has ruled on a corresponding section of the Religious Endowments Act, XXI of 1863, that there must be close correspondence between the suit instituted and the suit sanctioned. Section 18 of that Act relates to the sanction by the District Judge of suits against trustees of religious endowments, and the ruling in *Srinivasa* v. *Venkata* (2) shows that where the sanction given included two reliefs, *viz.*, removal of old trustees, and a claim for damages against them, and the suit prayed only for removal, and did not include a claim for damages, it was held that the omission was fatal to the maintenance of the suit. If the omission of a relief has this consequence, the addition of reliefs for which no sanction was

(1) 18 Beav., 256. (2) I. L. R., 11 Mad., 148.

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obtained must prove equally fatal. This objection was taken by the Madras High Court of its own motion, and the judgment states that the necessity for such leave or sanction indicates on the part of the Legislature an intention to provide an adequate protection to the trustees against vexatious suits. This principle would equally apply to the present case. There is a case under the Bengal Court of Wards Act, where, for want of sanction, a suit properly instituted by the manager under section 55 of that Act was held to be not maintainable—*Biseswar Roy* v. *Shoshi Sikar Eswar Roy* (1); see also *In re Kowlbas Koer* (2). Though the case relates to criminal procedure, the ruling in *Reg.* v. *Vináyak Diwákar* (3) may also be usefully consulted. It was held there that when the Local Government sanctions the prosecution of a public servant, a Court has no jurisdiction to entertain a charge if preferred otherwise than in the manner directed. Following the spirit of these rulings, we must hold that the District Judge was in error in inquiring into matters not included in the order of sanction. It is not necessary on this account to reject the plaint. The plaint, so far as it prayed for the appointment of new trustees and the settlement of a scheme of administering the trusts, was strictly within the limits of the sanction. The old trustees being willing to resign, their removal was also a matter covered by the sanction. In so far as the inquiry was extended to the investigation of breaches of trust, and the order of the District Judge required the old trustees to refund certain sums, the action of the lower Court seems to us not to be warranted by the terms of the sanction, and as such was *ultra vires*. The action of the Government Pleader in adopting Amratlál's charges was similarly unwarranted.

As regards the question of limitation, it arises only in regard to Bái Amratbái. She is the mother of Nihálchand, and succeeded to his property as heir on his death in January, 1883, and remained in management until the Sayad was appointed trustee on 26th June, 1886. The District Judge absolves Nihálchand from all dishonest mismanagement. He is, however, found

(1) I. L. R., 17 Cal., p. 688. (2) 8 Ben. L. R., App., p. 50.
(3) 8 Bom. H. C. Rep., Cr. Ca., p. 32.

fault with in respect of three matters, (C), (E), (F), in which the District Judge thought he was guilty of gross negligence. The period of limitation to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust is three years from the trustee's death. It is not alleged that Bái Amrat has herself committed any fraud or waste. She was ready to assign over the securities and she applied to the District Court for the appointment of trustees. As against Amratbái, therefore, the claim in regard to outstandings and loss of interest (E), (F) is not of the nature contemplated by section 10 of the Limitation Act, namely, a claim to follow up specific property, and section 10, therefore, does not protect the present claim which is barred under article 98—*Shápurji Nowroji* v. *Bhikaiji*[1]; *Sethu* v. *Subramanaya*[2]; *Chintamoni* v. *Sarup*[3]. The claim marked (C) [the silver censer] is of that nature, but it is of too trivial a character to require further notice.

We are, therefore, of opinion that both the objections urged by appellant's counsel are valid in law, and we uphold them accordingly. We amend the decree by limiting its relief to the two points covered by the sanction.

Decree amended.

(1) I. L. R., 10 Bom., p. 242. (2) I. L. R., 11 Mad., p. 274.
(3) I. L. R., 15 Cal., p. 703.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

YASHVANT NA'RA'YAN KA'MAT (ORIGINAL PLAINTIFF), APPELLANT, *v.* VITHAL DIVAKAR PARULEKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1895. *November* 25.

Mortgage—Right of mortgagee to sell mortgaged property—Regulation V of 1827—*Transfer of Property Act* (*IV of* 1882), *Sec.* 67—*Covenant to pay interest—Separate suit to recover arrears of interest—Civil Procedure Code* (*Act XIV of* 1882), *Sec.* 43.

The breach of covenant in a mortgage-bond to pay interest each year which covenant is not confined to the fixed period of the mortgage and is distinct from and

* Second Appeal, No. 316 of 1894.