APPELLATE JURISDICTION. (a)

Regular Appeal No. 14 *of* 1863.

SAMBANDA MUDALIYÁR.....*Appellant.*
NÁNASAMBANDAPANDARA and others...*Respondents.*

The paid managers of the affairs of a pagoda have no power as such to encumber the pagoda-property or to settle large outstanding demands against it.

Persons dealing with such managers are bound to enquire into the extent of their authority.

A person bound to make an enquiry and failing to do so, will be held to have notice of all such facts as that enquiry, if made, would have brought to his knowledge.

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THIS was a regular appeal from the decision of E. W. Bird, the Acting Civil Judge of Negapatam, in Original Suit No. 2 of 1861.

Branson for the appellant, the plaintiff.

Norton for the respondent, the first defendant.

The facts appear from the following judgment, which was delivered by

FRERE, J.:—This was a suit for the recovery of the sum of Rupees 68,074-14-6 said to be due, inclusive of interest, on a bond executed in favour of the plaintiff in 1853 by the second defendant, acting in his capacity of agent or manager of the affairs of the Cri Vaidyanádasvámi temple at Chiyáli. It was alleged in the plaint that for a long series of years debts had been incurred from time to time by the managers of the temple in question, in the course of their transactions with the plaintiff, and that these accounts were finally adjusted on the above date, when the bond was executed by the second defendant on behalf of the temple.

The first defendant, a director of the temple, pleaded that the second defendant had no authority to execute such a deed; that by agreements entered into and committed to writing in 1849, he, the second defendant, was expressly restricted from exercising any power beyond the ordinary management of the current affairs of the temple; that he

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was dismissed for misconduct in 1859, and that the present suit is the result of collusion between the plaintiff and the second defendant who has possessed himself of the sikka sannads or title deeds of the temple C and D, and has made them over to the plaintiff for the purpose of giving a colour to his pretended case against the temple. The first defendant proceeded to state that the plaintiff's family had formerly a claim against the temple, but that this claim was fully discharged prior to the year 1848. The answer of the third defandant, the present agent or manager, was to the same effect.

The Civil Judge, after considering the evidence advanced on both sides, expressed his opinion that the first and third defendants' chief plea as regards the absence of authority to execute such a deed as that on which this suit is founded, was fully proved by the agreements 3 and 4 dated in July 1849, which showed that the second defendant was simply a paid agent of the temple, liable at any time to dismissal at the will of the director of the temple, the first defendant. The Civil Judge further observed that the apparent collusion between plaintiff and the second defendant fully accounted for the possession by the former of the sikka sannads C and D, which were in the custody of the latter while in office and were subsequently found to be missing, and that the bond A itself, on which the plaintiff's claim is based, appeared to be undeserving of credit, with reference to the fact that the material on which it is drawn up, is a mere unstamped cadjan ; that the evidence to it was contradictory, and that it was unsupported by any written evidence of a contemporary adjustment of accounts, as usual in the case of tranactions to so large an amount. The Civil Judge accordingly dismissed the plaintiff's claim with all costs of suit.

The plaintiff has now appealed against this decision.

I have title to observe on this case, concurring as I do entirely in the view which the Civil Judge has taken of its merits. It is admitted, indeed, that the plaintiff or his family had at one time a claim against the temple ; but beyond the single deed A, there is no documentary evidence to shew that this claim existed at any later date than the year 1830, thir-

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tyone years prior to the institution of the present suit. There is nothing in evidence which can justify the inference that at the date of A the plaintiff could, in good faith, have supposed the second defendant to be vested with the necessary authority for the execution of such a deed ; and on a view of the entire case, I am led irresistibly to the conclusion that this deed is fictitious, and the result of collusion between the plaintiff, a former creditor of the temple, and the second defendant, the dismissed agent of that institution. I am therefore of opinion that this appeal must be dismissed with costs.

HOLLOWAY, J. :—The evidence in this case is wholly insufficient to establish that the document sued upon was executed by the second defendant while acting as agent of the trustees of the institution. The absence of a stamp-paper for the execution of a document for so large an amount far outweighs the oral evidence of that execution. Further, I am clearly of opinion that if executed, it would not have bound the trustees of the institution. It was argued that the authority to execute must be presumed, and that the plaintiff could only be bound by the documents 3 and 4, if he had notice of them. There would be something in this argument if the pledging of pagoda-property was *prima facie* within the scope of the authority of the paid servants of the trustees of a pagoda. It is quite clear, however, that the natural duties of such persons are confined to the conduct of the ordinary daily business of the institution, and by no means embrace the encumbering of the property and the settlement of large outstanding demands. The position of the second defendant was therefore one calculated to put the plaintiff upon enquiry, and if he had enquired, as he was bound to do, he would have discovered that the second defendant was by express agreement disabled from executing such a document as that used upon. He must be held to have notice of all such facts as an enquiry, which he was bound to make, would have brought to his knowledge. I therefore quite concur in the opinion that the decree of the Court below is in all respects right, and that this appeal must be dismissed with costs.

Appeal dismissed.