

1867.  
June 10.  
R. A. No. 15  
of 1867.

the jural relation brought into question between the same parties, the fallacy of this argument is of course obvious. Primarily the dismissal of a defendant from a suit has not the effect of establishing any right in the defendant. It may equally be that neither the plaintiff nor defendant is entitled. It is only when the grounds of the decision are scrutinized that it has the effect of establishing positively in favor of the defendant all the objective grounds of the decision which have led to the dismissal of the suit between the same parties if it is a decree in personam, as against an other persons if it is a decree in rem. I will only add one word of warning which I have recently seen not to be superfluous. Care must be taken out to suppose that a judgment in an action in rem is a judgment in rem.

*Appeal allowed.*

APPELLATE JURISDICTION (a)

*Regular Appeal No. 16 of 1867.*

CHINNA RANGAIYANGAR and another..... *Appellants.*  
SUBBRAYA MUDALI and 8 others..... *Respondents.*

A Committee appointed under Act XX of 1863 have power to dismiss the Trustees or Superintendents of Temples described in Sec. 3 of the Act, without having recourse to a Civil Suit : but such power can only be exercised on good and sufficient grounds.

1867.  
May 22.  
R. A. No. 16  
of 1867.

THIS was a Regular Appeal from the decision of R. Davidson, the Civil Judge of Tanjore, in Original Suit No. 15 of 1866.

*The Advocate General*, for the appellants, the plaintiffs.

*O'Sullivan*, for the 1st, and *The Advocate General*, for the 4th respondents, the 1st and 5th defendants.

The Court delivered the following

JUDGMENT :—This is an appeal against the decree of the Civil Court of Tanjore dismissing the suit. The appellants seek to obtain possession of the property of the Natchiyar Kovil Pagoda from the 1st, 2nd and 3rd defendants, on the ground that they are the Panchayets or

(a) Present : Scotland, C. J., and Collett, J.

Trustees of the Pagoda duly appointed by the Committee of the Combaconum District under Act 20 of 1863 (the defendants 4 to 9) on the dismissal of the 1st, 2nd and 3rd defendants.

1867.  
 May 22.  
 R. A. No. 16  
 of 1867.

It is not disputed that the provisions of the Madras Regulation 7 of 1817 were applicable to the Natchiyar Kovil Pagoda, nor that the nomination of the Panchayets rested with the Board of Revenue at the time of the passing of Act 20 of 1863, and it appears that the 1st, 2nd and 3rd defendants held as Panchayets under an appointment by the Board of Revenue. There is consequently no doubt that the superintendence of the Pagoda and the management of its affairs passed to the defendants 4 to 9 as the Committee of the District appointed under the Act: and the question for determination is, whether the removal of the 1st, 2nd and 3rd defendants from their office of Panchayets, assuming it to have been for sufficient cause, and the appointment of the plaintiffs in their stead, were within the powers of the Committee, or whether, as contended by the respondents, and decided by the Civil Court, a suit under the Act was for that purpose the only course of proceeding open to the Committee. If the latter contention is right, the appointment of the plaintiffs is ineffectual, and the suit has been properly dismissed.

Now the intention in passing Act 20 of 1863 was, as the recital clearly expresses, to relieve the Board of Revenue and the Local Agents from all the duties imposed by Regulation 7 of 1817 in respect of the superintendence of religious establishments, the appropriation of their endowments, the preservation of the buildings connected therewith, and the appointment of Trustees and Managers; or connected in any way with the management of such establishments: and by the enactments in Sections 7 and 12, all those duties, in the case of Pagodas to which Section 3 relates, are fully transferred to the Committees appointed by the Local Government "to take the place and to exercise the powers of the Board of Revenue and the Local Agents." The effect of the enactments is to confide to the Committee the same duties and responsibilities, and enable them to exercise the same powers, as the Board of Revenue; and, assuming for the present that the Sections which relate to the bringing

1867.  
 May 22.  
 R. A. No 16  
 of 1867.

of a suit do not apply to the Committee, we think the dismissal from office of Panchayets of Pagodas under their general superintendence is within the powers so transferred, but subject, of course, to the right which the person dismissed no doubt has to seek redress in a suit for dismissal on improper or insufficient grounds.

Regulation 7 of 1817, it is true, did not expressly give such power of removal, but it provided for the appointment of Panchayets by the Board of Revenue and did not contain any restriction on the performance of the duties of general superintendence and management. Section 14 merely declared the right of individuals to sue for an injury occasioned by any order passed under the Regulation. We think the authority to suspend or remove for just cause was properly incident to the principal duties and responsibilities of the Board of Revenue and was impliedly given: and it is evident from the case at page 39 of the *Madras Sudder Decisions of 1858*, to which the Court was referred, that such authority was recognized and had recourse to. Besides this case, we have, since the argument, met with some decisions on the corresponding Bengal Regulation (19 of 1810) which support our opinion. In a case at page 205 of 7 *Sud. Dew. Ad. Rep.* it was held that a Superintendent of a Mutt had been rightly removed by the Local Agents for misappropriation of the funds of the Mutt. In another case in 5, *Sud. Dew. Ad. Rep.* 363, the Court recognized the power of the Board of Revenue to remove the Matavalis or Curator of a Mahomedan religious trust for fraudulent abuse of the trust, and there is a decision to the same effect in 6, *Sud. Dew. Ad. Rep.* 110. There is another case in the 7th volume, p. 476, in which it seems to have been laid down that Local Agents had no power to remove the Superintendent of a Hindu Religious Establishment. But the office was held by hereditary succession, and the suit for restitution to the office was determined on the ground that the removal was for no sufficient cause.

The next point is the construction to be put on the sections in Act 20 of 1863 which provide for the bringing of a suit with the leave of the Court, and we are of opinion that the proper construction is that contended for on the

part of the appellant. Those sections have no application, we think, to the Committee in the discharge of the duties transferred to them, beyond making every member liable for misfeasance, breach of trust, or neglect of duty, at the suit of any individual having the interest pointed out by Section 15. There can be no doubt that their official position of Superintendents under the other sections of the Act gives a right of suit against persons subject to their control and bound to account to them ; and the enactments in Sections 14 and 15 are simply enabling. They relate to persons in their individual capacities, and secure to them severally the right to sue the member of any Committee as well as the other class of general Trustees or Superintendents to which Sections 3, 4, 5 and 6 of the Act relate, for misconduct, or breach of duty. In effect, they provide a remedy by suit as a security for the due performance by Committees of their duties of superintendence and management, and have no reference, we think, to the duties and powers of the Committee in dealing with Officers amenable to their control.

1867.  
 May 22.  
 R. A. No. 16  
 of 1867.

For these reasons our judgment is that the Committee had power to dismiss the 1st, 2nd and 3rd defendants without having recourse to a suit. But we cannot on this ground reverse the decree of the Lower Court. The power of dismissal can only be exercised on good and sufficient grounds, and in this case there has been no inquiry or decision as to the cause of dismissal by the Lower Court. We must therefore remit the case and require the Lower Court (after hearing any evidence which the parties may adduce) to decide the issue :—

Whether there were good and sufficient grounds to warrant the removal by the Committee of the 1st, 2nd and 3rd defendants from their office of Panchayets.

ORDER :—It is accordingly hereby ordered, that the foregoing issue be, and the same hereby is, referred to the Court of First Instance for trial, and the said Court is hereby authorised to receive any additional evidence which may be produced by the parties relating to the said issue, and to return its finding, together with the evidence, to this Court within six weeks from the date of receiving this order.

*Issue directed.*