

Appellate Jurisdiction (a)

Regular Appeal No. 85 of 1868.

K. VENCATABALAKRISHNA CHETTIYAR }
and another..... } *Appellants.*

KALIYANARAMAIYANGAR and 12 others... *Respondents.*

A District Committee appointed under Act XX of 1863 have no right to call for accounts from Trustees of temples which are within Section IV of the Act,

Regular Appeal No. 12 of 1867 (b) followed.

1869.
October 20.
R. A. No. 85
of 1868.

THIS was a Regular Appeal against the decision of E. F. Elliott, the Acting Civil Judge of Tranquebar, in Original Suit No. 1 of 1866.

This suit was brought by the members of the Pagoda Committee of the Negapatam circule against the trustees of certain kutalays or institutions of the Sri Teyagaraya-sawmi pagoda at Trivalore for the recovery of accounts under Section 13, Act XX of 1863, and is valued at Rupees 26,512-5-6 according to the amounts set apart for the different kutalays by the circar. The plaintiffs stated that the defendants, who are the trustees of the said pagoda, did not furnish them with true accounts of the receipts and disbursements thereof, including the balance in hand for Fusli 1273 (1863-64) under Section 13, Act XX of 1863, although called upon by the plaintiffs to do so several times in writing; that the plaintiffs then represented the matter to this Court, who referred them to a civil suit under Section 18 of this Act on the 27th October 1865, whereupon they have brought this action for the recovery of these accounts. They put in a list of the kutalays and their trustees with the particulars of their valuation, according to circar accounts, calculated on an average of their respective receipts and disbursements for 10 Fuslies past.

The 1st defendant stated that the six supplemental defendants 8 to 13 in this suit manage the affairs connected with the receipts and expenditure of the "Oonathuray kutalay," referred to in the plaint, and had done so as a here-

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

(b) See *infra* page 52.

ditary right since a long time back ; that the Government, for their safety, appointed a punchayet to superintend over the kutalay, of which he is a member, but the accounts of the said kutalay being usually kept exclusively by, and under the charge of, the supplemental defendants, he is unable to furnish any accounts, unless he is put in possession of those accounts by those defendants ; that upon receiving a notice from plaintiffs to produce the accounts, he called upon those defendants for them, who refused to deliver them to him on the grounds that Government had no authority in their appointment as trustees, and therefore they were not bound by any law to render accounts to plaintiffs.

1869.
October 20.
B. A. No. 85
of 1868.

The defendants 8 to 13 intervened, and were made supplemental defendants. The defence of all the defendants 2 to 13 is to the same effect ; that the plaintiffs had no right of action ; that they (defendants) were independent trustees not amenable to the provisions of Section 3 of the Act, and consequently did not recognize the power of the Committee (plaintiffs) to direct them to make over the accounts of their kutalays to them ; that they come under Section 4 of the Act, as the trusteeship to which they had succeeded in due course is adinam or independent ; that Government had never possessed nor ordinarily exercised the power of appointing trustee to these kutalays ; and that from time immemorial, each trustee had, while alive, nominated his successor, and they had enjoyed by inheritance.

The issue was,

Whether the plaintiffs, the Negapatam Circle Pagoda Committee have the power, under Section 13 of Act XX of 1863, to require the defendants to produce their accounts.

Both parties agreed to rest their claims solely on documentary evidence.

The following was the judgment of the Civil Judge:—

To prove the question at issue, it becomes necessary to the plaintiffs to establish that the kutalays in question at the time of passing Act XX of 1863 were dependent and not independent, and therefore fall under Section 3, and not under Section 4 of the Act, and that the circar exercised the power of nominating to these trusteeships, or of approving of such appointment, which alone would bring them under

1869.
 October 20.
 R. A. No. 85
 of 1868.

their control and management, and subject them to their interference under Section 3, but if that is not proved these officers come under Section 4, and the District Committee clearly have not the power over these defendants as trustees.

These are the points of a ruling of the High Court in Regular Appeal No. 12 of 1867 in a somewhat similar case as to the power of a pagoda committee, with reference to a plea of independent trusteeship of "adinam" pagoda and which forms a complete guide to a decision in this case.

In the cases of kotalays, Nos. 2, 3 and 4, the plaintiffs have themselves adopted this ruling, and withdrawn their claim regarding them.

With reference to the remaining 3 kotalays, they have produced public documents of 1812, consisting of muchilkas and pattiolais, upon which they base their claim, but these documents in no way tend to establish the substantial question at issue, that the nomination to these trusteeships at the time of passing of this Act vested with the Government or any public officer, or was subject to the confirmation of Government or of any public officer. The penal conditional clause attached to the muchilkas, and the rating of salaries alluded to in the pattiolais, are alone produced as sole evidence of the dependency of these trusteeships, and are represented to be convincing.

On the other hand, the defendants have clearly established by their documents that these kotalays have been enjoyed by their predecessors from time immemorial, and prior to 1811, and have descended to them by inheritance, and been enjoyed by them exclusively without any interference on the part of Government as to the nomination to them or confirmation of such nomination, and that therefore there has been the exercise of an independent right since time immemorial which the existence of punchayets, admitted by defendants, did not tend to subvert, and that documents VII and VIII in the case of No. 1 kotalay, show beyond a doubt that the Government declined to interfere in any way by the fact of this kotalay being directed to be made over to the "adinam" stanikams, which is further supported by their G. O., dated June 1866, in a similar case in Canjeveram.

The evidence therefore adduced by the plaintiffs is excessively meagre, and, in the opinion of the Court, they have failed to establish that the defendants are dependent trustees under Section 3, and are subject to the powers vested in them as a District Committee, and consequently that they have no power under Section 13, Act XX of 1863, to require the defendants 1 to 13 to produce their accounts, and for these reasons the Court dismisses the suit with costs.

1869.
October 20.
R. A. No. 85
of 1868.

The plaintiff appealed to the High Court.

Venkatapathy Row, for the appellants, the 2nd and 5th plaintiffs.

Snell, for the 2nd, *Srinivasa Chariyar*, for the 7th, 8th, 10th, 11th and 13th, and *Sanjiva Row*, for the 5th, 6th, and 12th respondents, the 2nd, 5th, 7th, 8th, 10th, 12th, 13th, 14th, and 15th defendants.

The Court delivered the following

JUDGMENT:—This is a suit by the committee for the superintendence of religious establishments within the district of Negapatam, appointed under Act XX of 1863, to compel the defendants who are the trustees and managers of the Sri Tengarajasami pagoda at Trivalore, consisting of eight kutalays or separate establishments, to render proper accounts of the property and funds of the pagoda, and the income and expenditure for the years 1863 and 1864 in compliance with the provision in Section 13 of the Act. The defence made in the written statements of the defendants except the 1st is substantially that their offices of trustees and managers passed by hereditary right independently of any nomination or confirmation by the Government or a public officer; and the pagoda therefore was one of those to which Section 4, and not Section 3 of the Act applied, and consequently the plaintiffs did not possess any power to call upon the defendants to account. The validity of this ground of defence was conceded by the plaintiffs in regard to three of the kutalays; and as respects the others it was the sole question raised by the issue framed between the parties, and the Civil Court, guided by the judgment of this Court in the case of *Ramaiyengar alias Ramanuja Chariyar and others v. Gnana-sambanda Pandara Sannadi and others*, (a) delivered on the 22nd of November 1867, decided that the evidence failed to

(a) Post page 53.

1869.
October 20.
B. A. No. 85
of 1868.

establish that Section 3 of the Act was applicable to the kutalays of the pagoda in dispute, and consequently that the defendants were subject to the power vested in the plaintiffs as the District Committee appointed under the Act, and thereupon dismissed the suit.

The decision of the Civil Court is objected to by the plaintiffs in their petition of appeal on the ground that it is against the weight of the evidence, but the objection has hardly been relied upon by their Vakil. Hé was obliged to concede that although the evidence proved that the Government did formerly exercise an authoritative superintendence and control over the management of the affairs of the pagoda and the conduct of its officers, it not only failed to show that such superintendence and control had ever extended to the appointment or succession to the office of a trustee of the pagoda, but tended to show that the trusteeships had passed by hereditary right quite independently of either nomination or confirmation on the part of the Government or any public officer. That being so the legal grounds on which the decision in the case just referred to rest are strictly applicable to the evidence, and the Civil Court rightly held in accordance therewith that the suit was not maintainable.

A good deal of consideration was given to that case and the reasons in support of the grounds of the decision are very fully set forth in the judgment with an express view to its serving as a guiding authority in the determination of similar cases. Simply therefore expressing concurrence in the reasoning as well as the grounds of the decision, our judgment is that the decree of the Civil Court must be affirmed with costs.

[*Note.*—Regular Appeal No. 12 of 1867, referred to in the above judgment is reported in the next page.]
