1931

Present: **Lyall Grant and Brieberg JJ.**

ABDUL GAFFOOR HADJIAR *et al.* *v.* AHAMADU LEBBE MARIKAR *et al.*

367-8—D. C. Colombo, 34,834

Action—Trustees of mosque—Appointment of priests—Meeting of congregation—Exclusion of electors—Declaration that the proceedings are irregular—Civil right—Maradana Mosque Ordinance, No. 22 of 1924.

By Ordinance No. 22 of 1924 meetings of the congregation of the Maradana Mosque have to be called by the Secretary of the Board of Trustees on the request of the Board or the Executive Committee or of fifty members of the congregation. The control of the priests is vested in the Executive Committee, who are given, *inter alia*, the power to fill any vacancy caused among the priests, subject to the approval or otherwise of the congregation. A chartered accountant to audit the half-yearly balance sheet has to be selected by the congregation. Certain members of the Executive Committee acting in concert excluded from a meeting held for submitting for approval the appointment of two priests and for appointing an auditor, a large number of the congregation who had not registered themselves, registration not being a test of membership under the Ordinance.

Held, that action lay against the members of the Executive Committee who required the Secretary of the Board of Trustees to call the meeting, and the Secretary of the Board of Trustees, at the suit of the plaintiffs as members of the congregation, for a declaration that the meeting was irregular and the proceedings void.

A claim by the congregation to appoint a priest of their choice is not a matter involving any question of religious rites or practice.

The right of the congregation to select a chartered accountant to audit the accounts of the mosque funds is a civil right.

THE plaintiffs instituted this action against the first to fifteenth defendants for a declaration that a meeting of the congregation of the Maradana Mosque held on August 25, 1929, was irregularly held, that it was null and void, and that the resolutions passed there were not duly passed, and they asked that the resolutions be expunged from the minute book. The plaintiffs also prayed that the defendants be directed to submit a half-yearly balance sheet. The plaintiffs were members of the Board of Trustees of the mosque, and the defendants, with the exception of the second defendant, who is the Secretary of the Board of Trustees, are members of the Executive Committee. It would appear that on the resignation of a priest of the mosque, the Executive Committee on May 30 appointed two others in his place, but no action was taken to obtain the approval of the congregation, until July 18, when the Executive Committee resolved to call a meeting for the purpose. The plaintiffs' case was that the defendants wrongfully excluded from the meeting a large number of the congregation by limiting the meeting to those who had registered themselves as members of the congregation in compliance

with a notice issued by the Committee. They said that that was illegal and not *bona fide* and was a dishonest device to exclude many members of the congregation from the meeting. The learned District Judge gave judgment for the plaintiffs holding that the action of the defendants in requiring registration as a qualification for attending the meeting was unlawful.

H. V. Perera (with him *Ismail* and *Mahroof*), for first to sixth and fifteenth defendants, appellants.—The District Court has jurisdiction only where a plaintiff asserts he has a civil right, *e.g.*, a right of property. As to distinction between civil and religious rights see *Marshall's Judgments, (1893), p. 656, ss. 7, 8.* A right to vote in the deliberations of a body of people is not a civil right.

A civil right and an infringement of it are necessary ingredients of a civil action. In *1 S. C. R. 354*, action lay for a declaration that a priest of a temple was entitled to certain income as priest, because a right of property, hence a civil right was involved. Where a plaintiff cannot refer to a civil right of his, whether proprietary or contractual, that has been infringed he has no cause of action.

The act complained of here is a collective act, the resolution of a body of people. Against whom or what body of people can relief be claimed appropriately in this case? How can an act be attacked without making them parties whose act it is? All the parties are not before the Court. Persons not before the Court will not be bound by the order of the Court. What will the effect be of a declaration that the resolution is void? Relief claimed must be against a party in respect of right of plaintiff. Here relief asked for is in connection with the resolution, *i.e.*, to declare acts, not of the defendants, but of the congregation, void, members of the congregation not being parties.

Section 64 of the Courts Ordinance confers civil jurisdiction on District Courts. *Vide* section 40, Civil Procedure Code, for requirements of plaint. Damages were claimed from a Muhammadan priest for failure to assist at a burial. It was held that the matter was purely ecclesiastical, that no civil right of plaintiff was infringed, and hence the District Court had no jurisdiction (*Ram. Rep., 1863-1888, p. 340*).

Counsel also cited *Mohammadu Lebbe v. Kareem*[1], *Supramaniam Ayar v. Changaranpillai*[2]. A duly appointed Lebbe of a Muhammadan mosque to whose office certain dues attached has a right of action against persons interfering with the performance of his duties as Lebbe, because a civil right of his was involved (*2 Curr. L. R. 22*).

The result of the proceedings was the appointment of two priests, which does not touch the civil rights of the plaintiffs either as members of the congregation or as Board of Trustees. Persons who were excluded were not the plaintiffs. Therefore, in respect of the exclusion plaintiffs have no cause of complaint. If a person with a statutory right to vote is excluded, then he has a right of action for damages (*Ashby v. White*[3]). In such a case, the proper defendants would be those who kept the plaintiff out.

[1] *N. L. R. 351.* [2] *N. L. R. 30.* [3] *Engl. Rep. 417.*

Rule 9 of Ordinance No. 22 of 1924 provides for one approval only. If a subsequent meeting could not be convened for avoiding the proceedings of an earlier meeting, then the remedies are (*a*) *quo warranto* against the priests, (*b*) *mandamus* against the Secretary if he refuses to convene a meeting for the approval of the appointment of priests. That would give complete relief, and bind everybody.

If there is no statutory right given in a particular case, then we must fall back on the ordinary principles according to which actions may be brought. The right of each member is a right to vote. If that is violated he has an action for damages. No Court can enforce agreements strictly personal in nature. Counsel cited *Rigby v. Connel* [1]; *Baird v. Wells* [2].

If the declaration asked for here is one in respect of status (*vide* section 217, Civil Procedure Code), then the priests must be parties.

In the case of corporations owing property, *e.g.*, limited liability companies, each shareholder has a right of vote. The vote would be in the nature of property, for each shareholder has as many votes as shares. If a shareholder is dissatisfied with the act of the corporation, he will be allowed an action.

As to misjoinder of causes of action.

The first cause of action is against a number of individuals, of whom all but the second defendant are members of the Executive Committee. That is, they are sued as a number of individuals alleged to have done certain acts. Assuming that the plaintiffs have this cause of action against these individuals, then the second cause of action can be joined only if all the defendants are jointly liable on that second cause of action (*Kanagasabapathy v. Kanagasabai* [3]).

The second cause of action is in respect of the failure to submit a balance sheet as required by rule 15, which casts a duty on certain officers. If this cause of action is under this part of the rule, then the action can be only against the Managing Trustee and Treasurers. If this cause of action is under the latter part of the rule (*re* audited balance sheet) then that cause of action can only arise after an audit. If this cause of action is available at this stage, the action must be against those who were under a duty to submit a balance sheet.

A. E. Keuneman (with him *Marikar* and *Salman*), for seventh to fourteenth defendants, appellants—appellants in appeal No. 367—associated himself with the argument which was addressed the Court in appeal No. 368. No cause of action has arisen in these plaintiffs. The main issue in this case is whether first to fifteenth defendants acting in concert wrongfully and illegally refused to admit a large number of persons to the meeting of August 25, 1929.

Certain office-bearers may have been affected, but seventh to fourteenth defendants are not affected at all.

[1] *L. R. (1880.) 14 Ch. D. 482 at 487.*

[2] *1890, 44 Ch. D. 661.*

[3] *25 N. L. R. 173.*

The first to fifteenth defendants are said to have acted in concert. If they did not so act, the whole action against them must fail.

It is necessary to show that these defendants acted in concert for a particular purpose. The plaintiffs themselves do not complain of the register. The Executive Committee never imposed any condition with regard to the preparation of the register.

The Executive Committee took the right view when they said that the register is a matter for the Secretary of the Board of Trustees to deal with.

Under rule 17, meetings of the congregation are always called by the Secretary of the Board of Trustees when the Board or Executive Committee has business to transact.

If a register is necessary, Secretary of Board of Trustees is the proper official to prepare it.

Executive Committee left matters quite properly in the hands of the Secretary of Board of Trustees. (See 1 D 24.)

Actual evidence—There is no evidence at all touching seventh to fourteenth defendants, only " nodding of heads " on the platform.

The Judge finds that the Executive Committee until October, 1929, had been kept in the dark as to the transactions of the sale of the mosque premises to the Municipality. Then, how can Executive Committee " pack " the meeting of August 25, 1929, in order to stifle free discussion regarding acquisition of mosque lands by the Municipality?

Hayley, K.C. (with him *Garvin*), for plaintiffs, respondents.—It is unquestionable that the Secretary with the consent of the Executive Committee conceived the idea of adding to the statutory requirement of the members' right to vote, the necessity of registration. Then, are plaintiffs entitled to a declaration that the meeting is invalid? Plaints to obtain declarations differ slightly from ordinary plaints. This plaint does not ask declaration of liability on anybody. Defendants are the members of the Committee. Certain defendants said there were others (sixteenth to nineteenth defendants) who were members of the Committee. No attempt to make seventh to fourteenth defendants liable. Seventh to fourteenth defendants specifically pleaded that meeting was duly convened and held. If I sue some for declaration that meeting out of order, and they deny that meeting is out of order, I can continue the action. In action for declaration, if party has no dispute, he should say so and claim to be discharged: if he denies, and puts plaintiff to proof, he cannot later say that he is not concerned.

This is not an ecclesiastical matter. Confirmation of priests is not a religious matter. The question is whether officers of a statutory incorporated body have in accordance with statutory rules performed their duties. Complaint is that Executive Committee has done an act which is *ultra vires*. Action is only one for declaration. *Vide* section 5, Civil Procedure Code, " neglect to perform a duty." Decree may declare a right or a status, section 217. Declaration made under section 217 (*g*) is

similar to declarations made under English procedure (*O XXV. r. 5 Annual Practice, 1931*). Counsel also cited *Oram v. Hutt* [1], *London Shipowners' Association v. London and India Docks* [2], *Coke v. Crossingham* [3].

When Executive Committee had business to transact, plaintiffs had statutory right to have that business transacted in accordance with Ordinance: Confirmation by congregation of appointment of priests by committee is required by rule 9 (*b*). If that meeting of congregation is irregular, plaintiffs as members of congregation have the right to apply for injunction restraining priests from acting, and *a fortiori*, declaration that meeting was irregular. There is no power in anyone to add to qualifications in rules any further qualification of registration. Qualification arises from status, not registration; idea of registration is purely artificial.

What is position of parties who do not complain personally? Can they obtain declaration that proceedings were irregular and *ultra vires?* Injunctions have been granted to prevent companies or directors from holding meetings otherwise than in accordance with articles (*Kay v. Croydon Tramways* [4]).

When there is a right to vote, Court interferes where certain votes were excluded (*Pender v. Lushington* [5]). Counsel also cited *Cronch v Steel* [6], *Grovers v. Winbourne* [7], *Ross v. Rugg-Price* [8].

Judgment by declaration is a comparatively new remedy. *Quo warranto* does not lie except in respect of public offices (*Wood Renton's Encyclopaedia of Laws of England, Vol. 12, 185-186*).

As to misjoinder, *vide* section 22, Civil Procedure Code. Any objection must be taken at outset, in all cases before the hearing (*24 N. L. R. 199*). On plaint as it stands, there is misjoinder neither of parties nor of causes of action. Defendants are members of the Executive Committee. It is not sufficient to say now that one of them is not a member. No action is to be defeated by reason of misjoinder or non-joinder of parties (section 17, Civil Procedure Code).

Rajapakse (with him *D. S. Jayawickreme*), for sixteenth to nineteenth defendants, respondents.—Plaintiffs brought action originally against first to fifteenth defendants-appellants asking for declaration. Appellants pleaded in answer that there were certain others, including sixteenth to eighteenth defendants, who were members of Executive Committee. Presumably, position of appellants in answer was that sixteenth to eighteenth defendants should be joined. Plaintiffs moved to have sixteenth to eighteenth defendants joined. District Judge ordered appellants to pay sixteenth to eighteenth defendants their costs. Supreme Court will not readily interfere with orders as to costs, where there is sufficient reason for the exercise of the discretion of the District Judge as to costs.

H. V. Perera, in reply.—There is a distinction in respect of breach of statutory duties between private and public acts. When act is a public act though there may be a penalty for breach of statutory duty, action for

[1] *(1913) 1 Ch. 259.*
[2] *(1892) 3 Ch. 242.*
[3] *(1908) 2 Ch. 624.*
[4] *(1898) L. K. 1 Ch. 358.*
[5] *(1877) 6. Ch. D. 70.*
[6] *1 E. & B. 402.*
[7] *(1898) 2 Q. B. 402.*
[8] *(1876) 1 Ex. Div. 269.*

damages lies at suit of individual who suffers. When the act is a private act no action lies at suit of individual (*Atkinson v. Newcastle Waterworks Co.*[1]). As to use of word " right ", and whether there is an enforcible right in a particular individual (*vide Allen v. Flood* [2]).

Every shareholder of a company has a pecuniary interest in the assets of a company. Member of congregation has no proprietary right in mosque; he has not the right of a beneficiary under a private trust. Position of a shareholder is different from that of person whose pecuniary rights are not affected, who questions act of a body. Unless he can say his right of vote is violated, he is out of Court.

It is essential to an action in test that the act complained of prejudicially affects the plaintiff in his legal right (*(1860) 13 Moors' P. C. Cases 209.*)

October 14, 1931. DRIEBERG J.—

These two appeals were heard together. No. 367 is an appeal by the seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth defendants; No. 368 is by the first, second, third, fourth, fifth, sixth, and fifteenth defendants.

The plaintiffs brought this action against the first to the fifteenth defendants for a declaration that a meeting of the congregation of the Maradana Mosque held on August 25, 1929, was irregularly held, that it was null and void, and that the resolutions passed at it were not duly passed, and they asked that the resolution be expunged from the minute book. The plaintiffs also prayed that the defendants be directed to submit a half-yearly balance sheet for 1927, 1928, and to June 30, 1929, but the last half-yearly balance sheet was filed before the trial.

The respondents are members of the Board of Trustees of the mosque and the appellants, with the exception of the second defendant-appellant, who is the Secretary of the Board of Trustees, are members of the Executive Committee.

The constitution of the governing body of the mosque and its powers and duties so far as are necessary to be known for the purpose of this appeal are as follows. In August, 1924, Ordinance No. 22 was passed to incorporate the board of electors of the mosque. Seventy-five of their number were incorporated as the Board of Trustees of the Maradana Mosque, the property of the mosque and the Zahira College were vested in them and provision was made for the affairs of the corporation to be administered by an Executive Committee to be elected in pursuance of rules to be framed under the Ordinance. The rules provided for the term of office of the original members of the Board of Trustees and for the appointment by the congregation of their successors. The Board of Trustees had to elect eighteen of their number as an Executive Committee, and of these a President, a Vice-President, a Secretary, two Treasurers, and a Managing Trustee of the Executive Committee. The Secretary of the Executive Committee could not be the same person as

[1] *(1877) L. R. 2 Exch. 441.* [2] *(1898) 1 App. Cas. 1 at 28 and 29.*

the holder of the office of Secretary of the Board of Trustees, the latter being elected by the congregation. The control of the priests by rule 9 (*b*) was vested in the Executive Committee, who were given the power to remove any of the priests from office, if necessary, and appoint his successor, and to fill any vacancy caused otherwise among the priests, subject to the approval or otherwise of the congregation.

Under rule 17 the Treasurers of the Executive Committee are required individually and jointly to furnish the Executive Committee with a half-yearly balance sheet duly audited by a chartered accountant selected by the congregation.

Meetings of the congregation have to be called by the Secretary of the Board of Trustees on the request of the Board or the Executive Committee or of fifty members of the congregation (rule 17). The proceedings of a meeting of the congregation have to be recorded in a minute book signed by the Chairman and Secretary of the meeting, and the minute book has to be kept in the custody of the Secretary of the Board of Trustees (rule 2 (*h*)).

The first defendant is the President, the fifteenth defendant the Vice-President, the fourth defendant the Managing Trustee, and the fifth and sixth defendants the Treasurers of the Executive Committee. There were two priests, Hasana Segu Lebbe and Wahu Marikar Abdul Rahiman; the latter retired in May, 1929, and at a meeting of the Executive Committee held on May 30, two priests were appointed in his place, Mohamed Isdeen Hadjiar and Mohamed Yoosoof Alim. The record in the minutes is that they were appointed " for the present " but no action was taken to submit the appointments for the approval of the congregation until July 18, when the Executive Committee resolved on calling a meeting of the congregation for the purpose. But this was after 305 persons who claimed to be members of the congregation had complained on June 10 (P 4A) that the two appointments were made without the consent of the congregation. The meeting of the congregation was held on August 25. The case for the plaintiffs is that the appellants wrongfully excluded from the meeting a large number of the congregation by limiting the meeting to those who had registered as members in compliance with a notice which was published on August 8, that all members of the congregation should apply for registration and that those who had not registered would not be considered members for the purpose of voting at a meeting of the congregation. They say that this was illegal as it imposed a test of membership not required by rule 1, further, that this was not done *bona fide* but that it was a dishonest device by which they hoped to exclude many members from the general meeting which they announced on August 14 would be held on the 25th of that month for the purpose of appointing an auditor and of submitting for approval the appointment of the two priests. They say that registration was designedly carried out in a manner which resulted in the exclusion from the meeting of about 540 members of the congregation whose presence at the meeting the appellants feared as there had been grave irregularity or neglect on their part in the management of the mosque funds and accounts of which, further, they had not prepared proper balance sheets as required by the rules.

The learned District Judge, Dr. Pieris, has formed a very clear and strong opinion on the facts that the action of the appellants was not *bona fide* and that they had the intention the plaintiffs impute to them. He was also of opinion that the action of the appellants in requiring registration as a qualification for attending or taking part in the meeting was unlawful.

I shall deal with these matters later and shall now consider the arguments placed before us that on the facts found the action is not maintainable.

If the action is maintainable the plaintiffs have sued the right parties. The appellants, they say, were the members of the Executive Committee who were responsible for this; the other members whom they did not sue but who were subsequently added, the sixteenth, seventeenth, eighteenth, and nineteenth defendants, repudiate the action of the appellants and support the plaintiffs. For the purpose of declaring the meeting irregular and the proceedings void the necessary parties have been sued—the members of the Executive Committee who required the Secretary of the Board of Trustees to call the meeting and the Secretary of the Board of Trustees. The first defendant presided at the meeting and the second defendant acted as Secretary though the report P 50 does not show that they were elected.

It was contended that the right of appointing priests was not a civil right but one concerning religious matters which were not within the jurisdiction of the Court. But this is not a purely ecclesiastical matter or one involving any questions of religious rites or practice; it is merely a claim by the congregation to appoint a priest of their choice. Such claims are recognized by our Courts (*Aydroos Lebbe v. Saibu Dorai* [1]). This case is referred to in *Mohammadu Lebbe v. Kareem* [2]. But there is the right of the congregation to select a chartered accountant to audit the accounts of the mosque funds which is a civil right.

It was said that all the members of the congregation or at any rate all those present at the meeting should have been made parties to this action as the resolutions were passed on their votes. I do not think this necessary. A member present did ask the Chairman to admit those who were outside and who had been refused admission; the first defendant, who was Chairman, did not take the opinion of those present on this point but merely stated that only registered members holding cards of admission could take part in the meeting.

If the plaintiffs have a right to a declaration that the meeting was held irregularly and not in compliance with law, the proper persons to be sued are those on whom the law imposes the duty of calling and arranging for the meeting, and this, as I have pointed out, has been done.

But it was contended that though this duty was imposed by the Ordinance there was no corresponding right to enforce it by an action of this nature. The duties in question are of a purely ministerial nature and in carrying them out irregularly the appellants have not acted *bona fide* but out of malice or improper motive. Whether such an action will

[1] *Legal Miscellany, Special Decisions 17.* [2] *(1893) 1 N. L. R. 351.*

lie " must to a great extent depend on the purview of the legislature in the particular statute and the language they have employed and more especially when, as here, the act with which the Court have to deal is not an act of public or general policy " (*Atkinson v. Newcastle Waterworks Co.*[1]). The Ordinance was passed to incorporate the existing Board of Electors; this appears from the Ordinance and is stated so expressly in the statement accompanying the draft published for information, 16 D 3. It is not suggested that there is anything new in these rights given to the congregation under the Ordinance and I do not see anything in the Ordinance which would detract from the right which the congregation had before of enforcing such rights as these by action. It is contended that the plaintiffs have no right of action as they were not excluded from the meeting, but this does not necessarily bar them from complaining of the irregularity of the meeting and the exclusion of others; nor is it necessary that the plaintiffs should have adopted the course provided by section 102 of the Trusts Ordinance, No. 9 of 1917.

On the first issue the trial Judge has found that the appellants acting in concert illegally refused to permit a large number of the members of the congregation to be present at and take part in the meeting and vote and exercise their rights of management. Mr. Perera contended that there was no evidence to support this finding, that the only person refused admission whose right to membership the plaintiffs sought to prove was P. K. M. Usuf and that proof of this had failed.

The right of specified persons who were entitled to but were refused admission has not been placed before the Court very fully, but there is enough evidence of this nature to support the finding. The trial Judge believes that the signatories to the letter P 4A were *bona fide* members of the congregation and that at the time the Executive Committee accepted this. There is much to support this view. The first defendant and the third defendant say that an inquiry was ordered on this point and that only 10 or 15 members were found among the signatories, but the trial Judge does not believe that such an inquiry was made, and I think he is right. The Executive Committee then knew of the growing opposition and I do not think such a reply as P 5 would have been sent by them if they had regarded such a majority of the signatories as outsiders. The letter concludes with an undertaking that their petition would be considered when the question of a permanent priest was considered.

The trial Judge holds that numbers of those who signed P 4A and who formed themselves into the Association of the members of the congregation of the Maradana Mosque were prevented by the condition of registration from attending the meeting. They were present however in large numbers at the mosque premises.

There was another opportunity for the Executive Committee to take up this position when they received the letter of July 9, in which the request was made for the use of the mosque premises for a protest meeting. I should have expected the Committee to have added in their reply the very good reason that the majority of the applicants were not members

[1] *(1877) 2 Ex. Div. 441, 448.*

of the congregation. The first defendant admitted that so far as he was concerned he had no objection to the application being allowed and he could not remember whether he opposed it.

In the first defendant's speech at the meeting of August 25 there is no suggestion of the opposition consisting of non-members trying to intrude into the management of the mosque; on the contrary, he describes them as a " core of rot "—ungrateful men who, forgetting what had been done for them by those who had devoted their lives to the mosque and the Zahira College, were behaving in an ungentlemanly and low born manner.

P. K. M. Usuf claims to have been a member of the congregation and a worshipper at the mosque for thirty years and that he has had the services of the mosque priests for religious ceremonies at his house. He mentions two instances: one, the marriage in July, 1926, of Thahira Umma; the certificate of this marriage, P 48, supports his statement that M. A. L. Sheikku Levvai, the mosque priest, officiated at it. The other is the marriage in November, 1929, of Hanifa with Ummal Masahira whom he calls Zubeida Umma, at which the same priest officiated, P 49. The mosque priest conducted the naming ceremony of his children. The second plaintiff says that Usuf is a prominent member of the congregation.

At Usuf's marriage the officiating priest was one from another mosque who was brought in by his wife's relations but he says that both the priests of the Maradana Mosque were present on his invitation.

Against this is the statement of the fourth defendant that he did not recognize him as a member of the congregation and of the first defendant that he is not a member. It was also said that his father was not a Ceylon Moor but a Coast Moorman, one from Southern India. But the children of a Coast Moor who settles in Ceylon are recognized as Ceylon Moors and there is the evidence of the eleventh defendant of one such being a trustee of the mosque. The trial Judge has formed a very poor opinion of the truthfulness of the first and fourth defendants and I cannot say that he is wrong. I take it that he accepts the evidence of Usuf and the second plaintiff on this point.

There is also the evidence of the second plaintiff that M. L. Samsudeen, Pitcha Thamby Samsudeen, Miskin Bawa Ahamed, P. C. M. Usoof, and S. D. M. Usuf, who are members of the congregation, applied for forms, and were refused.

In the cross-examination of the first defendant it was elicited that among the signatories to P 4A were two of the trustees, A. L. Abdul Hamid and M. B. Mohamed; that two other signatories, Mahar Baboob and Mashood, were the sons of Aboobacker, a member of the congregation who had himself signed the petition.

The trial Judge has rightly found that the action of the original defendants in limiting the meeting to those only who had registered was illegal in that it imposed a qualification of membership not required by the Ordinance. It was conceded that there could be no objection to a register of members being prepared; it would be helpful in many

ways and, if done well and with the genuine object of having as complete a list as possible of the members, it would be of special assistance at a general meeting of the congregation, for all those on the register could be admitted without any further inquiry into their qualifications. But it was not within the power of the Executive Committee to refuse a member admittance on the ground only that his name was not on the register.

But the trial Judge finds that the idea of registration was conceived and carried out with the object of keeping out the opposition members from the meeting, and that the whole thing was a farce; this undoubtedly appears to be so. The first defendant admits that the Committee decided on registration when it was reported that only ten or fifteen of the signatories of P 4A were members. But the Judge does not believe that there was such an inquiry or report. It had never been found necessary before to have a register. The Colombo Moors belong either to this mosque or to the New Moor street mosque and the first defendant says that it would be at once known whether a person was a member or not. The document of 1913 was not a complete list.

On August 8 appeared the notice requiring registration on or before the 19th; there was no announcement there of a meeting. The time allowed appears to me to be suspiciously short; the notice was addressed to people many of whom are not well educated and would not act promptly in such a matter. When a very reasonable request was made by the Association of the then Maradana Mosque Congregation by P 9 of August 13 for an extension of time to September 10, the meeting was fixed on the same day for August 25; this left only six days for registration. Whatever might be said of the request of the Secretary of the Association for 2,000 forms, the suggestion that forms should be available at the mosque was a most reasonable one and it has not been explained why this was not done, though the first defendant admits that the mosque was the proper place for this purpose. Application for forms had to be made to the second defendant at his house. By P 14 of August 16 the second defendant as Secretary of the Board of Trustees wrote to Mr. Akbar that forms would only be issued on the Board being satisfied that an application was *bona fide* and that it should be made to the Secretary or his authorized agents. The first defendant says that there were no authorized agents and he could not say whom the second defendant referred to by that description. P. K. M. Usuf says that the second defendant insisted on personal application to him; when he sought the second defendant he was not in his office and he had to go to the courts; there he told him that he was a Coast Moorman and not entitled to a form. Now the second defendant is a proctor and would ordinarily be at the Courts during the most part of what the first defendant says would be the proper time for registration, namely, from 9 o'clock in the morning to 5 o'clock in the evening. The position is further complicated by the fact that the second defendant practises also at the Court at Avissawella, about 26 miles from Colombo, and also keeps an office at Kottawa which is outside Colombo.

The second defendant was not called and we do not know how many registrations, if any at all, were effected as the result of applications to him. No signed application forms have been produced. The book 1 D 30 does not contain the signed forms but the first defendant says that it was made up from them; he could not say how many forms had been issued by the second defendant and can speak of only one claim, that of a brother of Mr. Macan Markar, being referred to the Executive Committee for decision. Usuf's case was not put before the Committee. Jabar, the third defendant, admits that paid canvassers were employed by the Committee to get members to register and he admits that the second defendant may have been trying to get his supporters beaten up; but we find the second defendant on August 16 writing to Mr. Akbar—there were then only three more days for registration—that forms would only be supplied on the application of individual members.

Much time was taken at the trial in inquiry into the circumstances under which the first defendant took the sum of Rs. 23,323.76 for his professional services in the acquisition by the Municipality of land belonging to the mosque. In the plaint it was alleged that the first defendant, acting in concert with the other defendants, had appropriated a sum of about Rs. 30,000 and that their object was to keep out of the meeting all who questioned the first defendant's right to take this money. An issue was framed whether the first defendant in concert with the second to fifteenth defendants had wrongfully appropriated this sum. Objection was taken to this issue but counsel for the plaintiffs stated that it was only needed to explain the conduct of the appellants in the matter of the meeting and the Judge accepted it for that purpose.

The trial Judge has dealt with this matter very fully. Rs. 23,323.76 was an enormous sum to pay the first defendant for the simple work he had to do and it was not remuneration on the usual basis for professional services but a bargain for a share of the proceeds of the acquisition, the first defendant undertaking to defray all expenses. The only expenses he incurred were a fee for a consultation with counsel and a fee to Mr. Eastman whose valuation he obtained. He did not say what he paid counsel but he said he paid Mr. Eastman a fee of Rs. 300 and could not remember whether he paid him more, but from his later evidence it appears that this was all he paid Mr. Eastman and for it secured his services in the matter of another acquisition as well in which he was appearing. He said he used to receive large fees in acquisition matters but he keeps no record of his professional earnings. It is clear that it was the intention of the fourth defendant that the books should contain no reference to the amount paid to the first defendant but only so much as was received after the deduction of the latter's fees.

The first defendant's manner of obtaining his balance fee out of the second payment was very irregular and unworthy of his position as President of the Executive Committee. It is said that he is the most prominent member of the Board of Trustees and the others look to him for guidance. On April 19, 1929, the Chairman issued in favour of the fourth defendant a cheque for Rs. 13,557.32 and sent it to the first defendant; on July 9 it was endorsed by the fourth defendant; the

first defendant passed it into his account and gave the fourth defendant a cheque for Rs. 6,778.86 which was credited to the mosque account on July 15. The Judge finds that the original entry in the books was of this amount only without any disclosure of the price paid and the payment of Rs. 6,778.86 to the first defendant. The Judge believes that the reference to these sums which appear in the books was made later.

Between April 19 and July 9 there went on what the trial Judge refers to as a tug-of-war between the first defendant and the fourth defendant for the cheque, the fourth defendant refusing to endorse it and the first defendant refusing to give it to the fourth defendant. The fourth defendant says that hoping his heart would melt he made fervent appeals to the first defendant to forego his claim and let the mosque have the whole amount. The first defendant had already received Rs. 16,545.10 out of the Rs. 119,945.10 paid on the first acquisition and the fourth defendant's letter (P 59) of May 10 to the first defendant shows that he then took the position that the first defendant had been overpaid by Rs. 6,545.10 as he had asked for a fee of Rs. 10,000. If the fourth defendant was, as he suggests, wrongly questioning his right to a further fee, I should have expected the first defendant to have at once placed the matter before the Committee; but the meetings of May 26 and 30 passed without his making any reference to the matter though he was present and presided.

But Mr. Perera contends that nothing in these matters concerning the acquisition money could have induced the original defendants to decide on keeping out the opposition from the meeting for the reason that the Judge finds that it was not until the meeting of October 21, 1929, that the rest of the Executive Committee was informed for the first time of the amounts paid by the Municipality and what was paid to the first defendant. It is true that this was the first formal intimation to the Committee collectively and the first record of it in the minutes. It was after the summons in this action had been served on the first four defendants and in view of the charge made in the plaint it was very necessary that the books should contain some record of this kind even though belated. But it does not follow from this that the appellants, other than the first and fourth defendants, did not know on July 18, 1929, when they decided on registration that the matter of the acquisition money could afford the opposition a strong ground for criticism. The acquisition resulted in a very substantial addition to the mosque funds, there is no secrecy about such proceedings, and it is not unreasonable to suppose that they did inquire what the Municipality has paid, and from the amounts brought to account they would have known that a very large sum had been deducted for expenses. The second plaintiff says that he knew the exact amount the first defendant had taken and that it was common knowledge that he had taken Rs. 30,000, that it was a fact known to everyone. Usuf says it was known that a large sum had not been accounted for and that it was intended to raise this question at the meeting. There had been opposition growing since May, 1928, and on July 21, 1929, the Association of the Congregation was formed

at a meeting at the Tower Hall. The Committee apparently realized that they had to face criticism for they decided on having the accounts of the first half of 1929 audited; there had been no audit since 1927. But whether they did desire a genuine and effective audit is open to much doubt. The trial Judge does not however hold that the appellants, other than the first and fourth, knew as far back as July 18, 1929, of the sums retained by the first and fourth defendants but he does find that the first and the fourth defendants were desperately anxious to avoid any scrutiny of these transactions and that all disliked the idea of a general meeting and that the register was devised for the purpose of keeping the opposition out of the next general meeting.

It was urged that the appellants at the general meeting were not conscious that they had anything to fear from an examination of the accounts for they appointed a leading firm of Chartered Accountants, Messrs. Ford, Rhodes, Thornton & Co., as auditors and the first defendant stated that though it was said that money had been embezzled and the accounts were all wrong, nothing " would be spent " without the Executive Committee's permission. The report P 50 reads thus, but the context shows that what he did say or meant to say was that nothing had been spent without their permission. He explained that though the Ordinance required an audit by a Chartered Accountant this was not possible as the accounts had been kept in Tamil and there were no Chartered Accountants who knew the language. But he said that from 1928 the accounts had been kept in English. It is very difficult to believe that the second defendant did not know this but we find, when on August 14 he inquired by P 28 from Messrs. Ford, Rhodes, Thornton & Co. whether they would undertake the audit, he wrote that the books were in Tamil. He wrote this to another firm of accountants as well. The fourth defendant says everybody but the second defendant knew that the books were in English. In the absense of any explanation by the second defendant it is difficult to avoid the belief that he wrote this hoping that it would discourage those he had written to from undertaking the audit. What reply the second defendant got from the other firm of accountants to whom the fourth defendant says he also wrote is not known, but it so happens that Mr. Illingworth of Messrs. Ford, Rhodes, Thornton & Co. had seen an earlier report that the accounts were in future to be kept in English and he replied on August 16 not consenting but asking the second defendant to make an appointment for a Tamil clerk of the firm to inspect the books, after which he said that he would write to him further. The second defendant did not reply to this letter and in fact he did not write after the meeting informing the firm of their appointment as auditors. The fourth defendant says that shortly before the meeting of August 25 the second defendant told him of what he had written and the fourth defendant then told him that the books were in English. I should have expected the second defendant to have at once written to Messrs. Ford, Rhodes, Thornton & Co. telling them of his error. The trial Judge has not referred to this matter but he has set out fully what happened after the meeting and this confirms my doubt that there was a genuine desire to have the accounts audited by a Chartered Accountant.

I see no reason to differ from the trial Judge on his findings on the facts and the appellants have not shown that on those facts the action is not maintainable. Objection was taken to the order of the trial Judge that the appellants should pay the costs of the sixteenth, seventeenth, eighteenth, and nineteenth added defendants but this order is right; it was necessary that all the members of the Executive Committee should be parties to the action.

Let decree be entered dismissing each of these appeals with costs.

LYALL GRANT J.—I agree.

Appeals dismissed.