1913.

Present: Lascelles C.J. and Wood Renton J.

NUKU LEBBE *v.* THAMBY *et al.*

309—D. C. Matara, 5,386.

Power of Courts to interfere with the proceedings of ecclesiastical bodies— Dismissal of priest by congregation — No charges framed — No pronouncement of judgment of congregation—Dismissal irregular— Domestic tribunals—Powers of dismissal—Right to be heard.

The Courts of law have all along claimed and exercised the right to interfere with the proceedings of ecclesiastical bodies of all descriptions wherever claims to property or to civil rights are involved.

The dismissal of a priest and manager of a Muhammadan mosque by the congregation was held irregular (*a*) as he had not been given fair notice of the charges against him, and a reasonable opportunity of putting his defence before the congregation; and (*b*) as there was no pronouncement of the real judgment of the congregation.

THE facts are set out in the judgment.

Sampayo, K.C., for the appellants.

Bawa, K.C. (with him *Sansoni*), for the respondent.

Cur. adv. vult.

January 29, 1913. LASCELLES C.J.—

In this case the plaintiff was the katibu or incumbent priest and manager of a Muhammadan mosque at Godapitiya. In this action he alleges that the defendants have unlawfully prevented him from acting as the priest of the mosque, and have not allowed him to take possession and charge of the mosque. The learned District Judge has given judgment in favour of the plaintiff, ordering him to be restored to possession, and condemning the defendants to pay him damages. The first point for consideration in the case is whether the case is one which a Court of law ought to entertain; in other words, whether it is a case in which any civil rights are involved. In view of the admission as to damages, and of the undisputed evidence that the plaintiff is entitled to the income of a small number of coconut trees, there can, in my opinion, be no doubt but that the District Court had jurisdiction to deal with the case. It appears that complaint had been made by the first defendant against the plaintiff and certain mattichchams, or officials of the mosque; and by agreement the complaint had been referred to the arbitration of certain gentlemen skilled in Muhammadan law and custom. The arbitrators found that the plaintiff and these mattichchams had

been guilty of certain irregularities, the nature of which is not specified, and by way of punishment imposed fines on the mattich-chams, and suspended the plaintiff for a given time until the month of Jemadul Awal, and ordered that at the expiration of that period he was to be restored to his position as incumbent priest. No question arises as to the validity of the award. It was obeyed, and the period of suspension has long since expired. It appears that the plaintiff aroused the resentment of the congregation or a portion of the congregation by causing to be read in the mosque a pattuwar or fathwa, in which the validity of the award was impeached; and as a result of the feelings which this action aroused, the plaintiff was prevented from resuming his position as incumbent priest of the mosque. The defence to the action is that the right of appointing or dismissing a resident priest is vested in the congregation, and that the plaintiff, after his suspension by the arbitrators, was lawfully dismissed from his post. There is not in the record any very definite evidence as to the custom or usage which regulates the appointment or dismissal of a Muhammadan incumbent priest. But, assuming that the right of dismissal is vested in the congregation, I think it is clear on the evidence that this right was not lawfully exercised in this case. Before such a right can be lawfully exercised, two conditions at least must be complied with. In the first place, it is essential on principles of natural justice that the person to be dismissed should have notice of the charges against him, and that he should have a fair opportunity of defending himself. This is a principle on which Courts have always insisted in cases where what are called domestic tribunals are entrusted with powers of this nature. The jurisdiction of the Benchers of the Inns of Court or of the members or the committees of private clubs are examples of cases in which this principle has been enforced. The second requirement to which I have referred is that the opinion of the body in whom the right of dismissal is vested should be ascertained clearly and without doubt. In both these respects the action of the congregation is defective. There is no evidence that the plaintiff had an opportunity of defending himself against the charge of improper conduct or insubordination in having the fathwa read in the mosque, and there is even less evidence as to the decision of the congregation taken as a whole. The evidence shows that there were two parties in the mosque, one in favour of the plaintiff and one against him. But which side was entitled to speak for the congregation as a whole is a matter which is left entirely in the dark. I think it cannot be maintained that the plaintiff was lawfully dismissed from his post after his suspension and after the date when, according to the award, he should have been restored to his office. I think the judgment of the learned District Judge is right, and ought to be affirmed. I would therefore dismiss the appeal with costs.

1913.

Nuku Lebbe v. Thamby

WOOD RENTON J.—

I am of the same opinion. The action clearly involves a claim of civil right, and it results from the evidence that the congregation is practically in the position of a domestic tribunal. There is nothing in the record to show that any special rules existed with regard to the procedure to be exercised by the congregation in the election or the dismissal of priests. In that state of the facts there can be no doubt but that the action lies. The Courts of law in England have all along claimed and exercised the right to interfere with the proceedings of ecclesiastical bodies of all descriptions wherever claims to property or to civil rights are involved. Moreover, there is direct authority on the point in Ceylon. It was held so far back as 1835, in a case reported in *Marshall's Judgments* at page 656, that the Courts here had the right to deal with claims of a pecuniary and personal description by the priests and officials of a certain Moorish temple, even although for the purpose of investigating such claims it became necessary to deal with religious privileges. The same principle is affirmed in the later case of *Aysa Oemma v. Sago Abdul Lebbe*,[1] although there the Supreme Court declined to exercise jurisdiction on the ground that no civil right was involved in the claim. So much for the power of the Courts to entertain this action. There can be equally little doubt but that in the absence of any special rules dispensing with the ordinary conditions under which domestic tribunals must exercise their jurisdiction and binding upon the respondent by acquiescence, he was entitled, in the first place, to have had fair notice of the charges against him, and a reasonable opportunity of putting his defence before the congregation; and in the next place, to a pronouncement of the real judgment of the congregation itself. I entirely concur with the observations of my Lord the Chief Justice, that on the evidence neither of these conditions was complied with. I agree that the appeal should be dismissed with costs.

Appeal dismissed.

[1] *Ram. (1863-68) 240.*