

Present : Garvin and Lyall Grant JJ.

1926.

SILVA *v.* BANDA.

246—*D. C. Kandy, 32,108.*

*Buddhist temporalities—Right of a trustee de jure to sue for injunction—
Infamous crime—Ordinance No. 3 of 1905, s. 8.*

A *de jure* trustee may maintain an action for an injunction against persons who unlawfully prevent him from entering upon his office or who interfere with him in the exercise of the said office.

The word "village" is not used in section 17 of the Buddhist Temporalities Ordinance in a sense which excludes a town lying within the limits prescribed in the register of *godurugam*.

A conviction by a Court-Martial in proceedings arising from the riots of 1915 does not amount to a conviction for an "infamous crime" within the meaning of section 8 of the Ordinance.

PLAINTEFF asserting that he was the duly appointed trustee of the Niyagampaya vihare brought this action in the District Court of Kandy for an injunction restraining the defendants from interfering with him in the exercise of his office as trustee and also

1926.
Silva v.
Banda

for a declaration that he is the duly appointed trustee. The learned District Judge granted the plaintiff the declaration and relief and the defendants appealed therefrom on the following grounds:—

- (1) That the District Court had no jurisdiction to entertain this action.
- (2) That the plaintiff was not the duly appointed trustee inasmuch as—
 - (a) Out of the 248 votes cast for plaintiff as against defendants 182 votes, 138 votes were not entitled to vote.
 - (b) The plaintiff was convicted of an infamous crime.

Hayley, for defendant, appellant.—The 138 voters from Gampola town belonged to the Ramannaya sect. They could not take part in the election of a trustee to a temple of the Siamese sect.

Further, the 138 voters of Gampola town do not belong to the godurugam of this temple. The register of godurugam speaks only of villages in the Gangapahala korale, corresponding now to villages of Gampola. The town of Gampola is thus excluded from the area. Again, section 17 of the Buddhist Temporalities Ordinance speaks of residents in the villages to which the temple is attached who may vote.

The District Court had no jurisdiction to entertain the case. Even if the objection was not taken in the lower Court the consent of parties cannot give a Court jurisdiction which it does not otherwise have. (see *In re Aylmer*¹; *Vansittart v. Taylor*²).

The plaintiff seeks a declaration from Court that he is the trustee, and it follows that any attempt to oust the *de facto* trustee should be by way of *quo warranto*. See *Application for a Mandamus on the Chairman of the Municipal Council*.³ The plaintiff in this action in effect proceeds to impeach the election of the first defendant, who is the *de facto* trustee (see *Subasinghe v. Ekneligoda*⁴).

The plaintiff has been convicted of treason, house-breaking, riotously destroying buildings, and shop-breaking. This would disqualify him from being elected. Section 18 of the Buddhist Temporalities Ordinance does not permit people who have been convicted of infamous crimes to be appointed trustees.

See *Wood Renton's Encyclopaedia*, Vol. VII., p. 149. Infamy is defined as conviction of some crime followed by a judgment.

Driberg, K.C., with *Navaratnam*, for plaintiff, respondent.—The word village cannot strictly be interpreted. By implication Gampola town is included in the godurugam of this temple, because Gampola town is part of the godurugam of Haliyawela vihare and Wanawasa vihare.

¹ 20 Q. B. D. 258.

² 4 *Ellis and Blackburn* 910.

³ 18 N. L. R. 97.

⁴ 4 C. W. R. 167.

The plaintiff alleges he is *de jure* trustee, and his application in this case to be declared the trustee is only incidental to the main application which is for an injunction against the defendant.

1926.

*Silva v.
Banda*

Infamous crime denotes a crime in which there is moral turpitude; thus in 9 *Hal. 666 (g)* infamous crime is a crime which includes sodomy, bestiality, &c.

Hayley, in reply.

March 25, 1926. GARVIN J.—

The plaintiff, who claimed that he was the duly elected trustee of the Niyagampaya vihare for a period of three years commencing December 8, 1924, brought this action to have it declared that he is the duly elected trustee and for an injunction restraining the defendants from preventing his entering upon the office of trustee and from interfering with him in the exercise of the said office.

The learned District Judge granted the plaintiff the declaration and relief he claimed, and the defendants appeal. The two main grounds on which this appeal is supported are that the Court had no jurisdiction to entertain this action, and, secondly, that the District Judge was wrong in his finding on the facts that the plaintiff had been duly elected trustee of the Niyagampaya vihare. Inasmuch as the respective cases of both parties have been fully stated and investigated it is perhaps as well first to determine the facts of the case.

The first defendant was the trustee of the Niyagampaya vihare for a period of three years ending December 7, 1924. The other defendants were sued as members of the District Committee. The sixth and seventh defendants have been discharged from the action and are not parties to this appeal. On December 5, 1924, a meeting of the District Committee was held for the purpose of electing a trustee for the next period of three years as required by section 17 of the Buddhist Temporalities Ordinance, No. 8 of 1905. The plaintiff claims to have been duly elected at that meeting by a majority of 248 votes to 182 polled by the first defendant. The defendants deny that the plaintiff was duly elected. They say that 138 votes cast for the plaintiff by the residents of Gampola town were admitted subject to objection and on the understanding that the objections were to be considered when the poll was closed, that the objections were considered and upheld, and the first defendant, who in consequence of the rejection of these votes then had the majority, was declared duly elected. The plaintiff impeached this statement as untrue. His story is that the poll was closed, the votes were counted in the presence of his lawyer, and that he received the congratulations of his supporters on the result. The crowd

1926.
 GARVIN J.
 ———
Silva v.
Banda

who awaited the result of the election thereupon left the scene after the usual demonstrations. It was then only that the idea was conceived of circumventing the election of a Low-country Sinhalese—a result which was a source of much disappointment and annoyance to many—by challenging the right of the residents of the town of Gampola to vote. If the plaintiff's story be true he must be deemed to be the duly elected trustee, unless and until his election is successfully impeached by appropriate proceedings. The result, however distasteful to the minority, cannot be invalidated by the expedient of entertaining objections to the voters after the election, hearing and upholding those objections in the absence of the voters, and then, on the new basis resulting from the rejection of these votes, setting aside the original election and declaring another candidate the duly elected trustee.

Which of these two versions is the true one? This is a pure question of fact upon which the learned District Judge has unhesitatingly come to the conclusion that the plaintiff's is the true story, and he has given reasons for his decision which appear to me to be both convincing and sufficient.

Section 17 of the Buddhist Temporalities Ordinance declares that a trustee shall be elected "by a majority of the voters resident in the villages to which the temple is attached."

Having established, as he has done, that the majority of the votes cast at the election without objection were in his favour the plaintiff is entitled to claim that he is the duly elected trustee unless and until his election is successfully impeached, not illegally and in the manner the defendants sought to do, but by appropriate legal proceedings.

Now, the grounds on which it is sought to impeach this election in these proceedings are—

- (1) That 138 votes were cast for the plaintiff by persons who were not entitled to vote—
 - (a) Because they were adherents of the "Ramannaya sect" and not of the Siamese sect.
 - (b) Because they were residents of Gampola town which is not within the godurugam of this temple.
- (2) That the plaintiff was convicted of an infamous crime and was not therefore eligible for election (*vide* section 8).

It is by no means clear by what tests it is to be determined whether a Buddhist layman is an adherent of one sect or another. Even so no attempt has been made to apply these tests to the case of any individual voter. There is no evidence in this case which will justify any court in disfranchising the voters of Gampola town on the ground that they have been proved to be "adherents of the Ramannaya sect." It is not therefore necessary to consider

whether it has been established that " adherents of the Ramannaya sect " are disqualified from voting for the election of a trustee to a temple of the Siamese sect, and *vice versa*.

1926.
GARVIN J.
*Silva v.
Banda*

The godurugam of this temple is recorded in the register of godurugam as consisting of—

- (1) Gampola Gabadagama.
- (2) Villages in Ganga Ihala korale.
- (3) Villages in Ganga Pahala korale.

Admittedly what is now Gampola town lies within the Ganga Pahala korale. It is contended that though Gampola town lies within the limits of this korale it is a town and not a " village " and as such is excluded from the area the residents of which are entitled to vote. It will be noticed that section 17 contemplates an election by the residents in the " villages " to which the temple is attached. The word village must, I think, be used in the same sense in the register. But if this somewhat specious contention is to be accepted the effect of the passing of the Buddhist Temporalities Ordinance was to exclude from participating in such elections all Buddhists who were residents in town. But it is impliedly admitted that a town may form part of the godurugam of a temple and that its inhabitants do enjoy the privilege of voting for trustees, for it is urged that Gampola town is part of the godurugam of Haliyawela vihare and Wanawasa vihare. The entry in the register that " villages in the Ganga Pahala korale " are part of the godurugam is not decisive of the question against the residents of the town. Indeed it is some evidence that it is part of the godurugam. There is the further fact that the town residents regularly supply the priest of Niyagampaya vihare with food. " It would indeed " says the learned Judge " be surprising if Gampola, once a royal residence, was not a village which supplied the food of the priests at the great vihare in the King's personal domain which adjoined. As a matter of fact Gampola even to-day regularly supplies that food when the Niyagampaya priests go round to ask for it, as they do."

There is no reason to suppose that in the register of godurugam the word " village " was used in this instance in a sense which excludes a town lying within the limits prescribed.

The last ground on which the plaintiff's claim is resisted is that he is a person who prior to the election was convicted of an infamous crime. The fact is that he was convicted by a Court-Martial which sat to try charges proceeding from the riots of 1916 of treason, riotously destroying buildings, and shop-breaking, and sentenced to death. The sentence was commuted and later he was released by order of the Governor. It is a matter of

1936.

GARVIN J.

*Silva v.
Banda*

common knowledge that the charge of treason was only maintainable by reason of the special circumstances obtaining at the time the riots took place.

No authority, however, was cited for the proposition that under these circumstances the plaintiff must be deemed to have been convicted of an "infamous crime." That expression ordinarily implies a crime which involves gross personal immorality and the only express reference in the books to which counsel could refer us identifies the expression "infamous crime" with crimes of that character. This crime of which the plaintiff was convicted is not "infamous" in that sense.

In the result the plaintiff has proved that at the meeting held for the purpose on December 5, 1924, he was duly elected trustee, while the defendants have failed in their attempt to impeach the validity of his election.

It only remains to consider the plea to the jurisdiction of the Court. No objection to the jurisdiction was taken in the Court below. In appeal, however, counsel submits that a District Court had no jurisdiction to entertain an action in which the validity of an election is called in question. He argued that this was in effect a proceeding to impeach the election of the first defendant who is the *de facto* trustee, on the ground of irregularity in the conduct of the election. He relies on the decision in *Subasinghe v. Ekneligoda*¹ as his authority for this proposition. The soundness of this decision is challenged by counsel for the respondent. It is sufficient for the purpose of this appeal to say that *Subasinghe v. Ekneligoda (supra)* bears no analogy to this case. The point for decision in that case was whether the unsuccessful candidate could maintain an action in the District Court to impeach the election of his successful rival on the ground that the election was irregularly conducted. It was held that the District Court had no jurisdiction to entertain such an action.

The facts here are entirely different. The plaintiff's action was in substance an action for an injunction against persons who were preventing him from exercising an office to which he had been duly elected. He sues as *de jure* trustee. He has established this claim by proof that he was elected by a majority of the voters. If he failed on this question of fact it might possibly have been urged that his action failed. But having established his claim he is entitled to the remedy he seeks. It is the defendants who are seeking to impeach his election. They have failed. If counsel's contention is to prevail a *de jure* trustee may not maintain an action for an injunction against persons who unlawfully prevent his entering upon his office or who interfere with him in his exercise of the said office. That he prays also to be declared

¹ 4 C. W. R. 167.

the duly elected trustee is beside the point. The foundation of the action is that he is vested with the right to the office. Whether he held office for a year, for a day, or not at all, because he was illegally prevented from assuming his office, makes no difference where the foundation of the claim to an injunction is that the claimant is *de jure* trustee. In each case that has to be established.

1926.
 GABVIN J
 ———
Silva v.
Banda

It may and often is challenged by the defendants but that cannot deprive the District Court of jurisdiction if it had jurisdiction to give relief to a *de jure* trustee.

The simple question is whether a *de jure* trustee may maintain an action in the District Court for an injunction to restrain persons who interfere with him.

The jurisdiction of District Courts is set out in section 64 of the Courts Ordinance. It extends, *inter alia*, to all civil matters except where any of such matters have been exclusively assigned by way of original jurisdiction to the Supreme Court, or otherwise specially withdrawn from its cognisance.

The right of a *de jure* trustee to his office and to exercise that office without illegal interference by others is a civil right, the infringement of which entitles him to a remedy. It must be presumed that the District Court in exercise of its general right to give relief where there has been an infringement of a civil right is entitled to give the plaintiff the relief he claims unless it can be shown that this case is specially placed outside the limits of its jurisdiction. *Subasinghe v. Elkneligoda* (*supra*) does not help the appellant, and no other authority has been cited in support of the contention that a case such as this is not within the jurisdiction of a District Court to entertain.

That a *de jure* trustee may maintain such an action has been recognized by this court. In *The Trustee of Mutiyangama Vihare v. Bandara* the Court entertained an action by a person claiming to be *de jure* trustee against the former trustee and the incumbent of the vihare to recover the property of the vihare which they were withholding from him. There as here the answer was a denial that the plaintiff had been duly elected.

If a District Court may entertain an action by a person claiming to be *de jure* trustee to recover property of the vihare from the trustee for the previous term who was wrongfully retaining that property on the plea that the plaintiff had not been duly elected, it is difficult to see why in similar circumstances it may not issue an injunction restraining the persons who were illegally interfering with him in the exercise of his office.

I would therefore affirm the judgment of the District Court and dismiss the appeal with costs.

LYALL GRANT J.—I entirely agree.

Appeal dismissed.