

Present : Fisher C.J. and Driberg J.

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ABEYSEKERE v. MARALIYA.

193—D. C. Ratnapura 4,949.

Buddhist Temporalities—Disbursements by trustee—Sanction of District Committee—Prescription.

Disbursements made by a trustee appointed under the Buddhist Temporalities Ordinance for purposes mentioned in section 20 of the Ordinance are not irregular merely because they have not received the sanction of the District Committee.

Where an action is brought by a trustee against his predecessor to make good a deficiency of money which should have been banded to him when he assumed the office,—

Held, that the cause of action arose on the date when he assumed office and that it was prescribed in two years.

THIS was an action instituted by the trustee of the Kiriella Nedun Vihare to recover a sum of Rs. 3,121.83 from the defendant, who was the predecessor of the plaintiff in the said office of trustee. It was alleged that the accounts of the vihare had been examined and audited and that the auditor had surcharged several items of expenditure incurred by the defendant during his period of office, which amounted to the sum claimed. The learned District Judge held that the expenditure required the sanction of the District Committee and gave judgment for the plaintiff for the sum of Rs. 1,371.83.

H. V. Perera (with *Wijeyewardena*), for defendant, appellant.

Navaratnam, for plaintiff, respondent.

October 22, 1929. FISHER C.J.—

In this case the plaintiff, "the duly appointed trustee of the Kiriella Nedun Vihare under the provisions of Ordinance No. 8 of 1905 for the years 1928 to 1930" (paragraph 1 of plaint), sued the defendant, who "was the duly appointed trustee of the Kiriella Nedun Vihare for the years 1920 to 1927 and officiated as trustee during the said period" (paragraph 2 of plaint), "to recover the aggregate sum of Rs. 3,121.83 with interest thereon from date of action till payment in full at 9 per centum per annum for the benefit of the Kiriella Nedun Vihare" (paragraph 6 of plaint). The plaint (paragraph 3) alleges that "in pursuance of a commission issued by

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the Court under the provisions of Ordinance No. 8 of 1905 the accounts of the said Kiriella Nedun Vihare for the first and second halves of 1926 and the second half of 1925 " were examined and audited. In the auditor's report which is annexed to the plaint the auditor surcharged several items of expenditure and the action was brought to recover the total amount of these items. There is no allegation of fraud in the plaint, and we must therefore consider the case on the basis that the payments were in fact made. The payments in question were as follows:—

- (a) A sum of Rs. 1,700 alleged to have been paid to the incumbent of the vihare for the purchase of goods for the pansala.
- (b) A sum of Rs. 176.83 alleged to have been paid to one M. S. Arnolis, chitra gura, for extra work done and not included in the deed of agreement.
- (c) A sum of Rs. 250 alleged to have been spent on pansalawatta.
- (d) A sum of Rs. 300 alleged to have been paid to the incumbent to proceed to Anuradhapura on pilgrimage.
- (e) A sum of Rs. 224 alleged to have been paid to one D. H. Karunaratne as compensation for loss sustained by him on his purchase of plumbago belonging to the Vihare from the said defendant.
- (f) A sum of Rs. 221 alleged to have been spent on repairs to the preaching hall.
- (g) A further sum of Rs. 250 alleged to have been paid to the incumbent to go on a pilgrimage.

In giving judgment the learned Judge said: " The principal objection to the expenditure in the case of all the items except (c). Rs. 250 for clearing the temple land, is that it has not been authorized by the District Committee; item (c) has since been passed by the auditor and may be struck out of the case. The District Committee appointed under the Buddhist Temporalities Ordinance of 1905 consists of a president and two members. There is nothing in the Ordinance requiring the sanction of the Committee for expenditure by the trustee. But section 12 (c) says ' The Committee shall make rules for prescribing the form in which all accounts, statements, and returns incidental to their business and that of the trustee shall be kept.' Rule 21 framed under section 12 of the Ordinance and published in *Government Gazette* of September 11, 1914, says that trustees shall keep a cash book in the form D annexed to the rules in which shall be entered all money, &c., coming into their hands and all expenses incurred by them. Rule 22 says that trustees shall keep a voucher book in the form E annexed and one of such vouchers shall be filled up for every payment made by them. In the specimens of both these forms D and E occur the words ' date of sanction

and No. of authority given by the District Committee.' It may therefore be inferred that the sanction of the Committee is necessary.' In the result judgment was given for Rs. 1,371.83.

In my opinion, except as regards item (e), the only test to be applied in considering whether these payments were properly or improperly made is whether or not they were authorized by section 20 of the Buddhist Temporalities Ordinance, No. 8 of 1905. That section vests in a trustee all the property belonging to the temple and all the offerings made for the use of the temple, other than those which are offered for the exclusive use of any individual priest, and empowers him to appropriate " the issues, rents, profits, or offerings " for the purposes enumerated in the section, and any payments made for any of those purposes cannot be regarded as improper or made *ultra vires* merely because the sanction and approval of the District Committee was not obtained. That the section empowers a trustee to make such payments is emphasized by section 21 (b) which imposes the duty on trustees of keeping accounts " of the disbursements made by them " for the purposes defined in section 20. The learned Judge has drawn the inference that the sanction of the District Committee is a condition precedent to the payments being lawfully made from the fact that in two of the forms appended to the rules made by the District Committee under section 12 of the Ordinance there occur the words " date of sanction and No. of authority given by the District Committee." However desirable it may be for trustees to make only such payments as the District Committee approve of, the mere occurrence of these words in these forms cannot in my opinion fetter or derogate from the express powers of expenditure which are vested in trustees under section 20. In considering these payments, therefore, on that basis they were all of them, except three, namely, items (d), (e), and (g), payments which in my opinion the trustees were authorized by section 20 to make. The learned Judge has deducted Rs. 200 from item (a), but that sum represents expenses which were incidental to the purchase of numerous necessary articles for the temple and included cost of carriage and I think, that in the absence of any evidence that the sum charged is unreasonable, it should be taken to have been duly made. Item (e) was a refund of the purchase money for plumbago got from the temple. The refund was made on the ground of some defect in quality. It is not therefore in my opinion a payment out of the " issues, rents, profits, or offerings " within the meaning of section 20 ; it was merely an adjustment of liability under a contract which it was within the power of the trustee to make as the person in whom the property of the temple was vested. I do not think the defendant can be called upon to refund this payment. With regard to the other items, the two items which, in my opinion, do not come within the provisions of section 20, even

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giving it the most generous and comprehensive construction, are items (d) and (g). As to these two items I think, subject to the question of prescription, they are sums which the plaintiff is entitled to call upon the defendant to refund.

With regard to prescription, this action does not, in my opinion, come within the exceptions mentioned in section 111 (1) of the Trusts Ordinance, No. 9 of 1917, but is one to which sub-section (2) of that section is applicable and must be regarded as an action for "loss, injury, or damage" within the meaning of section 10 of the Prescription Ordinance, No. 22 of 1871. The period of prescription in that section is two years, and the question is whether this action was begun within two years from the time when the cause of action arose. The payment (d) was made on June 20, 1926, and the payment (g) was made on July 25, 1925, and the action was brought on November 7, 1928. It is clear from the plaint that the action is brought by the plaintiff under section 30 of the Ordinance, although strictly speaking the caption should have been in accordance with that section. The action is in effect one to make good a deficiency of money which should have been handed over to the plaintiff by his predecessor when he assumed the office of trustee. In my opinion the period of prescription runs, at the earliest, from the day when the trustee assumed office, and that being so the action was brought well within the period of two years. Under these circumstances I think that the decree of the learned Judge should be varied and that a decree should be entered for the plaintiff for Rs. 550.

As regards costs, I think the proper order under the circumstances will be that the plaintiff should have the costs in the District Court on the basis of his having originally brought the action for Rs. 550, and there will be no order for costs of this appeal.

DRIEBERG J.—I agree.

Decree varied.

