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*Present: Schneider J. and Dalton J.*SEYADU LEBBE *v.* LOKU BANDA.240—*D. C. Kandy, 33,727.*

Buddhist Temporalities—Lease of temple land by incumbent—No appointment of trustees—Dismissal of trustee—Ordinance No. 8 of 1905, ss. 27 and 34.

The proviso to section 27 of the Buddhist Temporalities Ordinance under which temple lands may be demised by the incumbent with the sanction of the District Committee applies only to cases where no trustee has been appointed to the temple at any time under the Ordinance.

Per DALTON J.—The District Committee has no power to appoint a priest as a provisional trustee under section 34 of the Ordinance.

PLAINTIFF sought to recover from the defendant possession of a land which belonged to the Udamudune vihare. Plaintiff claimed upon a lease of the land given to him for a term of three years from September, 1925, by the Adikari Bhikshu of the vihare under the provisions of section 27 of the Buddhist temporalities. It was contended by the defendant that the lease was bad as there was a duly appointed trustee of the vihare, and that the Adikari Bhikshu had no right to grant a lease. The defendant claimed to be in possession by virtue of an informal lease entered into in 1912 between the then trustee and himself under which he had planted and improved the land.

The learned District Judge held that at the time the plaintiff obtained the lease there was a duly appointed trustee of the vihare and that the lease in his favour was bad. He dismissed the plaintiff's action.

N. E. Weerasooriya, for plaintiff, appellant.—The dismissal of the plaintiff's action is based on the finding that the District Committee's order of dismissal of the trustee was not properly made. The defendant has no right to raise an issue challenging the decision of the District Committee. For under section 16 of the Ordinance the only person entitled to question the propriety of his dismissal is the trustee himself; and a third party is clearly precluded from initiating an inquiry into the validity of a decision relating to the dismissal of a trustee—a decision which is deemed to be final and conclusive for all purposes. This

being the true legal position—the sole question for consideration is the validity of the lease granted by the incumbent to the plaintiff. With the sanction of the Committee an incumbent has power under section 27 to demise lands. Besides this, when a trustee is dismissed the Committee has power under section 34 to appoint any person to act provisionally as trustee. The incumbent having executed the lease in compliance with the directions of the Committee should be deemed to be a duly appointed provisional trustee. In these circumstances full legal effect should have been given to the plaintiff's formal lease.

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Navaratnam, for defendant, respondent.—The procedure followed by the Committee in dismissing the trustee was in defiance of the letter and spirit of the Ordinance. The dismissal was effected without the formulation of a charge or notice to the trustee concerned. That, in such circumstances, the defendant is barred from questioning the propriety of the dismissal of the trustee is a proposition which cannot be accepted without demur. The validity of the lease in favour of the plaintiff, however, can be considered apart from the question of the dismissal of the trustee. For it is clear law that once a temple is brought within the operation of the Ordinance an incumbent cannot have control over its temporalities even with the sanction of the District Committee. The true construction of section 27 of the Ordinance is to be found in the *Gonameruwewa Case*,¹ where, on the refusal of a trustee to act, the incumbent sought to maintain an action in respect of temple property, it was held that the incumbent had no status in the action; and that a duly appointed new trustee alone could maintain the action. It is therefore submitted that the incumbent could not execute the lease in question even with the sanction of the Committee.

Further, the argument that the incumbent was a duly appointed provisional trustee does not bear examination. The evidence is that although the incumbent was authorized to execute the lease, he was not appointed to act as provisional trustee. In fact such an appointment could not be made, as the appointment of a priest as a provisional trustee would be an infringement of the Ordinance. Sections 17 and 8 of the Ordinance set out the qualifications of a person seeking election as a trustee or aspiring to serve as a trustee. Such a candidate must be a Buddhist layman. The conclusion is thus irresistible that the incumbent having no legal estate in the land could not grant a valid lease thereof.

Weerasooriya, in reply.

¹ 19 N. L. R. 36.

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November 24, 1927. SCHNEIDER J.—

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On February 23, 1923, the defendant was appointed the trustee of the Nathegoda vihare and Kiri Banda of the Palipane Udamudune vihare for a period of three years from the date of the appointment. The incumbency of both these vihares is usually held by one and the same priest as the succession is in the same line of priests.

In proceedings taken upon a complaint made in writing by Seelananda, the incumbent of both the vihares, the Kandy District Committee dismissed both the trustees on September 5, 1923. In their evidence in this action instituted in February, 1926, both trustees say that they had no notice of the proceedings against them or of the order dismissing them from office. The Secretary of the Committee, who has given evidence when called by the plaintiff, says that the Committee has not appointed a provisional trustee or taken steps for the election of trustees to take the place of those the Committee had dismissed, but that on September 7, 1925, the Committee sanctioned a "lease by the incumbent of the Palipane Udamudune vihare of the land called Galkotuwa Illumbewella for a period of three years at Rs. 50 per annum" upon certain conditions. In pursuance of this sanction the incumbent granted a lease to the plaintiff on September 18, 1925, of the land, it being one of the temporalities belonging to the Palipane vihare. The defendant resisted the plaintiff from taking possession under this lease, and by this action the plaintiff sought to enforce his right of possession under the lease in his favour and to recover damages.

The defendant pleaded that he was entitled to the possession of the land demised, because in 1912 the then trustee and incumbent granted him an informal lease of the land in question for twenty years for the purpose of planting the land, and that he has made plantations under that lease and improvements to the value of Rs. 1,250. He denied the plaintiff's right to possession and prayed that if the Court held that the plaintiff was entitled to possession under the lease that he (the defendant) was entitled to receive compensation for the improvements he had effected, and to a *jus retentionis* till payment of such compensation.

In his judgment the District Judge states that it was conceded that the defendant had effected the improvements pleaded and was in the position of a *bona fide* purchaser and, in consequence, entitled to receive compensation and to *jus retentionis* till it was paid. The District Judge states that in those circumstances he was called upon only to decide whether the plaintiff was entitled to pay or tender the compensation claimed by the defendant and to demand a surrender of the possession to him. At the instance

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of the defendant he entertained and tried an issue as to whether the order of dismissal was rightly made. The issue was objected to by the plaintiff's counsel. The Judge held on that issue that the order of dismissal was not lawfully made. It followed upon that holding that Kiri Banda was a trustee at the time of the granting of the lease in favour of the plaintiff and that therefore that lease was not valid as it was not granted by the trustee who was in office. For that reason he dismissed the plaintiff's action. This appeal by the plaintiff is from that order. It is obvious that if the lease in favour of the plaintiff be invalid for the reason given by the District Judge, or for any other reason, this action by him must fail. The reason given by the District Judge for his holding that the dismissal was not lawful is that no specific charges were formulated after evidence had been recorded, and the trustee allowed an opportunity of defending himself as required by section 16 of the Buddhist Temporalities Ordinance (No. 8 of 1905).

The evidence regarding the proceedings which resulted in the dismissal of the trustees is the following:—The incumbent of the two vihares complained in writing to the Secretary of the District Committee that the trustees were not paying him his expenses and asked that an inquiry should be held. The Secretary thereupon sent a notice in writing to the trustees informing them of the complaint having been made by the incumbent and bidding them appear before the Committee on a day and hour named in the notice with their books of accounts showing the income and expenditure of the vihares, and also calling upon them for an explanation of their failure to submit to the District Court accounts once in six months as required by law. The extract from the minutes is to the effect that on the day fixed for their appearance the trustees were in default of appearance, the notice to appear having been served, and that the complaint was inquired into *ex parte* and the trustees removed from office. The Secretary of the Committee gave evidence in this case and stated that no charges were framed after the evidence had been recorded. If it had been necessary for me to express an opinion whether there had been a substantial compliance with the requirements of section 16 in this case I would have held in the affirmative. A substantial compliance with those requirements is sufficient to sustain an order of dismissal. The letter of complaint by the incumbent to the Secretary might be regarded as "recorded evidence" showing that the trustees had been guilty of gross negligence or misconduct, and the Secretary's notice to the trustees might be regarded as calling upon the trustees to answer to formulated charges. The notice distinctly specifies what the charges are against the trustees. But for the reasons which I shall presently state, it is not necessary to consider whether the requirements of the proviso in section 16

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(3) have been complied with. I regard that proviso as intended entirely for the protection and benefit of a trustee, and I think the Legislature intended that it is only a trustee who should have the right to bring before a Court of Law the validity of his dismissal. To take a different view might result in startling situations. A trustee might accept his dismissal and yet it would be open to a third party to impeach the validity of the dismissal for some incidental purpose. The Ordinance No. 8 of 1905 repealed three previous Ordinances dealing with Buddhist temporalities and was itself amended by the Ordinance No. 27 of 1912. The preamble to the latter Ordinance says that doubts had arisen as to the true interpretation of the Ordinance of 1905, and that it had become expedient also to amend that Ordinance. Its provisions distinctly indicate that mistakes had been committed in the administration of the previous Ordinances, and it was sought to validate acts which might have been regarded as invalid. The earlier Ordinances contain the provision which is to be found in the present Ordinance that the decision of the Commissioner or the District Committee in regard to the dismissal of a trustee shall be final and conclusive, and instances of grave injustice must have been brought to light in regard to such dismissals because the Ordinance No. 27 of 1912 contains an express provision granting jurisdiction to Courts, in which actions were pending at the commencement of the Ordinance, by trustees with respect to their dismissal or suspension, "to inquire into the justice, equity, and reasonableness of the dismissal or suspension notwithstanding anything contained in the Ordinance No. 8 of 1905." There is also a proviso in that Ordinance that "except in the case of pending actions, nothing in this section shall be deemed to affect the finality and conclusiveness of any decision of a District Committee under section 16 of the principal Ordinance." It is fairly obvious that the meaning of the provision in section 16 (3) is that a Court has no jurisdiction to inquire into the validity of a decision of a Commissioner, or of a District Committee, regarding the dismissal of a trustee provided the trustee had been given an opportunity of meeting specific charges, and that the only question competent for a Court to try would be whether the proviso had been complied with or not. In one of the provisos in section 2 of Ordinance No. 27 of 1912 it is enacted "that in the event of the Court ordering the reinstatement of any dismissed trustee, nothing in any such order shall be deemed to affect the validity of any act, otherwise valid, done by any person discharging or purporting to discharge the duties of the trusteeship in question prior to such reinstatement." That proviso undoubtedly applies to the pending actions referred to in that section, but it would also appear that it merely enacts a principle applicable to other cases of dismissal of trustees. Between

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the date of the dismissal of a trustee and the final decision of an action in which he challenges the validity of his dismissal there must elapse an appreciable period of time, and it is not to be conceived that during such period the office of trustee is to remain vacant and the duties of the office to remain suspended. It appears to me that a reasonable view to take of such a situation is that the order of dismissal stands effective until it is properly set aside, and therefore acts done by a trustee who takes the place of the dismissed trustee or by some person under the provisions of section 34 of the Ordinance before the reinstatement of the dismissed trustee must be regarded as valid. For these reasons I think that the District Judge had no jurisdiction in this case to inquire into the validity of the dismissal of the Udamudune vihare trustee at the instance of the defendant, and that it was only that trustee who had the right to question the validity of that dismissal. The order dismissing him has not been challenged or set aside, and I would regard that order as having been effective from the day it was made, namely, September 5, 1925. Accordingly, at the date of the granting of the lease in favour of the plaintiff there was no trustee functioning. If the Committee had made "provisional arrangements for the performance of the duties of the office pending the election of a successor," and the lease in favour of the plaintiff had been granted under arrangements so made it would have been a good lease by virtue of the provisions of section 34, but we have the direct evidence of the Secretary that no such provisional arrangements had been made. It follows that the incumbent, in granting the lease in favour of the plaintiff, was not acting in pursuance of powers derived under the provisions of section 34. The District Committee purported to act under the provisions of section 27, which contains a proviso that where no trustees have been appointed the incumbent may demise lands belonging to the temple with the sanction in writing of the District Committee. That proviso does not apply to the present case, and the District Committee appear to have been wrong in considering that it had any application. That proviso refers to those cases where no trustee had been appointed at any time under the provisions of the Ordinance.

I must, therefore, hold that the lease in favour of the plaintiff was invalid because the District Committee had no power to sanction that lease. I would affirm the judgment of the District Judge and dismiss the appeal, with costs.

DALTON, J.—

The plaintiff sought to recover from the defendant possession of a land which belongs to the Udamudune vihare. Defendant claims to have been in possession of the land since 1912 on an

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informal agreement for a period of twenty years entered into between him and the then trustee. At the end of the trial the learned Judge states it was no longer contended by the plaintiff that the defendant was not a *bona fide* possessor and that he was entitled to compensation for improvements. Plaintiff's claim was based upon a lease of the land to him for a term of three years from September 18, 1925. This lease was entered into between him and Seelananda Unnanse of Udumudune vihare, Adikari Bhikshu of the vihare, who is described therein as the lessor. The lease sets out that sanction thereto had been given by the President of the District Committee, Kandy, under the provisions of section 27 of the Buddhist Temporalities Ordinance, 1905. It was pleaded for the defendant that that lease was bad, inasmuch as there was a duly appointed trustee of the vihare, and that the Adikari Bhikshu had no right to execute the deed.

The only issues it is necessary to refer to, for the purposes of this appeal, are two:—

10. If a trustee had been duly elected at any time under the Ordinance in respect of the temporalities of this vihare, had the Adikari Bhikshu the right to give such a lease even with the consent of the Committee?
14. At the date of the execution of the lease had the trustee Attanillegedera Kiri Banda been legally deprived of his authority as trustee?

The latter issue was framed after some evidence had been led, and was objected to by plaintiff's counsel as being irrelevant. The learned Judge, however, dismissed the objection holding that this issue went to the root of the whole matter, heard evidence upon it, and found that the alleged dismissal of the trustee Kiri Banda was entirely irregular and invalid, and that at the date of the execution of the lease in 1925 the trustee was still in office and alone had the power to grant a lease. He accordingly dismissed plaintiff's claim, from which dismissal plaintiff now appeals.

With respect to issue 10, it is clear from the lease P1 that the lessor purported to act on the sanction of the District Committee given under section 27 of the Ordinance. The section, however, only provides for that sanction to be given in cases in which no trustees had ever been appointed under the Ordinance. It is admitted here on both sides that trustees had been appointed and therefore section 27 has no application on the facts. The Committee do not appear to have understood their powers, for it cannot be doubted that, having regard to the terms of P1, they were relying on section 27. It is urged for the appellant that

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they were really using the powers given them by section 34. Assuming that the dismissal of the trustee Kiri Banda on September 5 was in order, it was the duty of the Committee to see that another trustee was "forthwith elected" in his place. Taking the Ordinance as a whole, nothing is more clear than the intention that, except in certain specific cases, there shall be a trustee or trustees in whom the property is to vest, and upon whom are to fall the numerous duties and powers set out. It was also their duty to make provisional arrangements for the performance of the duties of the office, pending the election, by provisionally appointing someone to act as trustee. They neither appointed a provisional trustee to act, nor have they at any time proceeded to hold any election of a fresh trustee or trustees in place of the one they say they have dismissed. I am unable to agree that the sanction given to the Adikari Bhikshu was ever intended to be or is in any way an exercise of the powers given by section 34. Even if it were so, the Committee is prohibited from appointing anyone to serve provisionally as a trustee who has not the qualifications set out in section 8 of the Ordinance. One of the first essentials is that he must be a layman, and not a priest. I am of opinion that the lease upon which plaintiff bases his case is bad, inasmuch as the lessor had no right to give a lease. Issue 10, being answered in favour of the defendant, decides the case.

The learned Judge has preferred to decide the action on issue 14. That raises a more difficult question as to the interpretation of section 16 (3) of the Trustee Ordinance. I am in entire agreement with the learned Judge's remarks as to the conduct of the Secretary of the District Committee in bringing about the alleged dismissal of the trustee, as disclosed by the evidence, assuming that it is open to a third party as the defendant to question that dismissal as he has done in these proceedings. It was urged for the appellant that that dismissal was final and conclusive, and that it was open to the trustee or to the District Committee alone to question it under the proviso to section 16 (3). Here the trustee has not questioned his dismissal in any proceedings legal or otherwise, although there may be special reasons for that in this case, inasmuch as his three years of service expired early in 1926 and not long after the time at which he was dismissed. There is evidence also to show that he performed the duties of trustee to the end of his term of service and even beyond that period. I have great difficulty in limiting the application of section 16, as Mr. Weerasooriya argues it should be limited, by reference to section 30A. That the usual person to question his dismissal, if anyone questions it, would be a trustee, one can well understand. That a District

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Committee would question its own act, however, seems most improbable. That no other person is entitled to do so, as at present advised, I should have considerable difficulty in holding. However, it is not now necessary, in view of the answer to issue 10, to come to a definite conclusion on this point. For the reasons given by me when dealing with that issue, the judgment appealed from must be affirmed, and this appeal be dismissed with costs.

Appeal dismissed.
