

July 13, 1910

Present: Mr. Justice Wood Renton and Mr. Justice Grenier.

NUGAWELA v. RATWATTE.

31, D. C., Kandy, 5, Special.

Privy Council—Appeal—Dismissal of trustee by District Committee—Issue of writ by District Court—No appeal lies to the Privy Council as of right—Buddhist Temporalities Ordinance, No. 8 of 1905, ss. 16 and 35.

The petitioner was dismissed from the office of trustee by the District Committee under powers vested in it by section 16 of the Buddhist Temporalities Ordinance of 1905; in pursuance of that dismissal the District Court of Kandy issued a writ, under section 35 of the said Ordinance, requiring the petitioner to deliver up possession of the temple properties under his control. The petitioner appealed to the Supreme Court against the order of the District Court allowing the issue of writ; the appeal was dismissed. He then applied for leave to appeal to the Privy Council.

Held, that no appeal lay as of right to the Privy Council.

THE facts appear in the headnote.

H. A. Jayewardene (with him *Samarawickrama* and *R. L. Pereira*), for the respondent.—The decision of the District Committee in regard to the dismissal of the trustee is “final and conclusive” (section 16 of Ordinance No. 8 of 1905). The District Court merely acted ministerially in the matter. Where an Ordinance enacts that the decision of a body shall be final and conclusive no appeal to the Privy Council lies as of right against such decision. Counsel cited *In re Wi Matu's Will*,¹ *Theberge v. Laudry*,² *Cushing v. Dupuy*.³

The trustee has no pecuniary interest in the properties belonging to the temple. The interest of the trustee is analogous to the interest which an administrator has over the property of the intestate; it has been held that an administrator's interest over the intestate's property is worth nothing (*In re Estate of Rowther* ⁴).

Bawa, for the petitioner.—The matter in dispute involves, at least indirectly, title to property over Rs. 5,000 in value. The title to the temple property is vested in the trustee for the time being. [Wood Renton J.—The trustee is not claiming any property of any pecuniary value in these proceedings.] The position is analogous to a possessory action where the criterion of value is the value of

¹ (1909) 78 L. J. 17.

² (1876) 46 L. J. P. C. 1. 3;
2 A. C. 102, 106.

³ (1880) 49 L. J. P. C. 63, 67;
5 A. C. 409.

⁴ (1903) 2 Bal. 25.

July 13, 1910 the property; in a possessory action no question of title is involved, and the right to possess may be of very little or no pecuniary value. *Nagawela v. Ratwatte* An appeal lies to the Privy Council against an order dismissing a possessory action. See *O. B. C. Estates Co. v. Brooks and Co.*,¹ *Abdul Aziz v. Abdul Rahim.*² Counsel also referred to *Hadjar v. Pitche.*³

The present appeal is not on the merits; it questions the jurisdiction of the District Committee to make the order it made. An order made without jurisdiction is not "conclusive and final." The petitioner has a right to appeal to the Privy Council because he questions the jurisdiction of the District Committee and the District Court.

July 13, 1910. WOOD RENTON J.—

In this case the appellant applies for leave to appeal to the Privy Council from a judgment of the Supreme Court dated March 21, 1910, affirming a refusal by the District Judge, Kandy, to vacate an order made by him, on the application of the respondent, under section 35 of the Buddhist Temporalities Ordinance (No. 8 of 1905), for the issue of a writ requiring the appellant to deliver up possession of the property of certain temples in the Province of Kandy. The material facts of the case, in so far as it is necessary to state them for the purpose of dealing with the present application, are these. The appellant is Basnayaka Nilame of Kandy, and as such alleges that he is entitled to the possession of the property here in question. Proceedings were taken against him under section 16 of "The Buddhist Temporalities Ordinance, 1905," by, or on behalf of the District Committee. An inquiry was held, and as the result of that inquiry the appellant was dismissed from office; and in pursuance of that dismissal, the District Court of Kandy issued a writ, under section 35 of the Ordinance of 1905, requiring him to deliver up possession of the temple properties under his control. Against the order of the District Judge allowing the issue of the writ an appeal was taken to the Supreme Court. The appeal was dismissed, and the question we have now to decide is whether the judgment of the Supreme Court dismissing that appeal is itself appealable as of right to the Privy Council. Both the Courts Ordinance, 1869, section 42, and rule 32 of the scheduled rules appended to Ordinance No. 31 of 1909, expressly reserve the prerogative right of the Crown to grant special leave to appeal to the Privy Council in any case; and rule 1 (b) of the scheduled rules enables the Supreme Court itself to grant such leave to appeal from any judgment, whether final or interlocutory, which is not appealable as of right, if, in the opinion of the Court, the question involved is one which, by reason of its great general or public importance, or

¹ (1892) 1 S. C. R. 1.

² (1893) A. C. 193.

³ (1910) 13 N. L. R. 79.

otherwise, ought to be submitted to His Majesty in Council for decision. We are not concerned here, however, with appeals by special leave. The appellant's claim is that he is entitled to appeal as of right. On behalf of the respondent it was urged, first, that the circumstances of the present case do not satisfy the requirements of rule 1 (a) of the scheduled rules as to appealable value; and, in the next place, that an appeal is directly excluded by the provisions of section 16 of the Buddhist Temporalities Ordinance, 1905. I will deal with each of these objections in turn.

Section 16 provides that the decision of the District Committee in regard to the dismissal of a trustee shall be "final and conclusive." Section 35 enacts in substance that, when a dismissed trustee refuses or neglects to deliver up possession of the temple property, the District Court may issue a writ requiring him to do so. It shall be competent, the section provides, "to such Court to issue its writ to the Fiscal or Deputy Fiscal and give possession accordingly, as if it were a writ issued in execution of its own decree." The section goes on to provide that "for this purpose the application accompanied by the order of dismissal, duly certified under the hand of the President of the District Committee, shall be *prima facie* evidence of the facts stated in the said order, and shall be sufficient authority for the Court to act as aforesaid." The effect of these two sections, taken together, is to preclude any appeal from the decision of the District Committee dismissing a trustee, provided always—a point specifically dealt with in section 16—that, before dismissal, the trustee, who shall be dismissed, has been called upon to answer specific charges formulated against him, and has been allowed an opportunity of defending himself, to empower the District Committee to issue a writ of possession, on application made for that purpose, accompanied by the order of dismissal, duly certified under the hand of the President of the District Committee, and to put the writ so issued on the same footing as a writ issued by the District Court itself in the execution of one of its own decrees.

The real object of the present appellant is, in my opinion, not to recover or retain possession of the temple properties, which he has scheduled to his petition, and of which the value according to him is greatly in excess of the appealable amount, but to bring under review the proceedings of the District Committee which led up to his dismissal. I am disposed to think that, in such a case as this, the value of the temple property cannot be taken as the criterion of the appellant's interest. But even if there be any doubt on that point, I am clearly of opinion that the provisions of section 16 of Ordinance No. 8 of 1905 exclude all appeal as of right to the Privy Council. When the case came up before the Supreme Court in appeal, no objection was taken that an appeal would not lie. It is unnecessary to decide now whether, if that objection had been taken at that stage, it would necessarily have prevailed, in view of the wide powers

July 13, 1910

WOOD
RENTON J.

Nugawela v.
Ratwatte.

July 13, 1910

WOOD
RENTON J.

Nugawela v.
Ratwatta

conferred on the Supreme Court by section 39 of the Courts Ordinance, 1889, including, as they do, "the correction of all errors, in fact or in law, which shall be committed by any District Court." I think, however, that the words "final and conclusive" in section 16 do exclude an appeal as of right to the Privy Council (see *Cushing v. Dupuy*¹). Mr. Bawa argued that final and conclusive effect is given to such decisions, only in regard to the question whether or not facts justifying the dismissal have been established, and that, in spite of anything contained in the section, it was open to him to impeach the constitution of the District Committee which had disposed of the case. If carried out to its logical conclusion, this argument would, I think, practically defeat the obvious intention of the Legislature in enacting the section in question, to constitute the District Committee as a *quasi-judicial* body for the determination of the class of cases with which it deals, and to make its decision final, subject to the condition that the trustee whom it was sought to remove from office had been put clearly in possession of the charges against him and had had a reasonable opportunity of meeting them. There would be very few cases of inquiries under section 16, in which some objection to the election or the constitution of the District Committee on the ground of disqualification or interest could not be discovered. Section 16 itself does not support Mr. Bawa's argument on this point; it does not limit the final and conclusive effect of the decision of the District Committee dismissing a trustee to the grounds of such dismissal. It enacts that the decision of the Committee "in regard to such dismissal" shall be "final and conclusive." I think that the effect of these words is to give finality and conclusiveness to the decision of dismissal itself. If the decision of the District Committee is not appealable as of right, still less so is an order made by the District Court in the exercise of the auxiliary jurisdiction conferred on it by section 35.

It may perhaps be desirable that I should point out what is the object of the Legislature in providing that the decision of the District Committees should be final and conclusive. Under the scheme enacted by the Ordinance, District Committees have no funds at their disposal from which they can defray the cost of supporting their decisions if challenged in a Court of Law. It is therefore necessary, if these bodies are to discharge the duties assigned to them by the Ordinance, that, subject to the requirements of the proviso to section 16 having been satisfied, full effect should be given to the provision that their decisions should be final and conclusive. If the meaning of these words is to be whittled down, as suggested by the appellant, the powers of District Committees would be greatly impaired. They would hesitate to take any action which is likely to involve them in heavy litigation.

I would dismiss this application with costs.

¹ (1880) 5 A. C. 409.

GRENIER J.—

July 13, 1910

*Nugawela v.
Ratwatta*

I am clearly of opinion in this case that the appellant is not entitled as of right to appeal to the Privy Council from the judgment of the Supreme Court dated March 21, 1910. Indeed, I thought at the argument that his appeal from the decision of the District Judge should not have been entertained by this Court in view of the language employed in section 16 of Ordinance No. 8 of 1905, which makes special provision that the decision of the District Committee in regard to the dismissal of a trustee shall be "final and conclusive." To my mind it seems that it was the intention of the Legislature, such intention being also expressed in unmistakable terms, to give the District Committee the power to dismiss a trustee, and that such power was in every sense absolute and unrestricted. It cannot be presumed that in dismissing the appellant the District Committee did not act strictly in accordance with the provisions of the Ordinance, and I agree with the remarks of my brother in his judgment, which I have had the advantage of reading, that the real object of the present appellant is to bring under review the proceedings of the District Committee which led up to his dismissal. Then, as regards the value of appellant's interests, I do not see how we can be guided by the value of the temple property of which he was at one time trustee. What the appellant is seeking to establish is his status and position as a trustee, and I fail to see how the value of the temple property can be regarded as the criterion of his interests. It would be difficult to assess the value of his status as trustee. I would dismiss this application with costs.

Application dismissed.
