1914.

Present: Wood Renton C.J. and De Sampayo J.

CHARLES *v.* APPU *et al.*

287—D. C. Galle, 12,324.

" Sanghika " property—Is it res sacra*?—Seizure and sale of " sanghika " property for judgment debt of vihare.*

" Sanghika " property is not *res sacra.* It may be seized and sold in execution of a writ for the recovery of costs against the trustee of a vihare.

The property of a temple is liable to be sold in satisfaction of a judgment debt of the temple.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for the defendants, appellants.

E. W. Jayewardene, for the plaintiff, respondent.

Cur. adv. vult.

October 15, 1914. WOOD RENTON C.J.—

This case raises an interesting question under the Buddhist Temporalities Ordinance, 1905 (No. 8 of 1905). The plaintiff, the respondent, as trustee of Galapatha Vihare in Bentota, sued the defendants, the appellants, in D. C. Galle, No. 10,676, for a declaration of title to a certain land. The action was dismissed. The defendants thereupon issued a writ for the recovery of their costs, and seized in execution lands belonging to the vihare. The plaintiff claimed the lands as " sanghika " property of the vihare. The claim was dismissed. He brings this action accordingly under section 247 of the Civil Procedure Code, to have the lands declared not liable to seizure and sale, and the learned District Judge has given judgment in his favour, on the ground that " sanghika " property is a *res sacra* within the meaning of Roman-Dutch law, and that it is, therefore, not liable to be seized and sold in execution. I do not think that " sanghika " property can fairly be said to fall under the category of *res sacræ*. The passage in *Voet*,[1] in which the matter is dealt with,

[1] *Voet, 1, 8, 5.*

seems to me to support this conclusion: "*Inter res nullius sed divini juris, occurrunt primo loco sacræ, quæ rite per Pontificem vel Principem Deo consecratæ sunt, atque ita auctoritate publica ab usu profano ad pium translatæ. Sola proinde dedicatione privata sacrum non fit, multoque minus solo voventis voto. Talia erant donaria sacra, vestes, vasa, aliaque; ædes quoque sacræ; quibus tamen dirutis fundus sacer manet, religionis prærogativa, licet aliud in littore post casam illic positam iterumque destructam obtineat, deficiente cultus sacri favore.*"

The property dealt with in the above citation is property directly connected with religious worship. It does not afford any indication that property belonging to a religious corporation, even if it, and its rents and profits, were appropriated to corporate purposes—and "sanghika" property is nothing more than this—would be held to be impressed with the character of a *res sacra*. There is ample authority both before [1] and under [2] the Buddhist Temporalities Ordinance, 1905, showing that the powers of trustees in regard to alienating, and of otherwise dealing with, vihare property are limited. It does not follow that such property cannot be reached by an execution-creditor. What little authority there is, prior to modern legislation on the subject, would seem to show that it could.[3] But the matter, in my opinion, is now set at rest by section 30 of the Buddhist Temporalities Ordinance, 1905. That section is as follows:—"It shall be lawful for the trustees to sue under the name and style of 'trustees of (*name temple*)' for the recovery of any property vested in them under this Ordinance or of the possession thereof, and for any other purpose requisite for the carrying into effect of the objects of this Ordinance. They shall also be liable to be sued under the same name and style, but shall not be personally liable in costs for any act *bona fide* done by them under any of the powers or authorities vested in them under this Ordinance."

The plaintiff's counsel contended, in the first place, that the last clause in this section applied only to cases in which a trustee is a defendant; and, in the next place, that, even if its scope were wider, its sole effect was to exclude the ordinary law that a trustee is personally liable for costs where the trustee of a vihare could show that he had acted *bona fide* under the Ordinance. I do not think that either contention can prevail. The clause in question comes at the end of a group of sections enumerating the powers and duties of trustees, and the words "any act . . . . . done . . . . . under any of the powers or authorities vested in them under this Ordinance" cannot receive their legitimate effect unless we give to them a general application. In my opinion the rules of law as to ordinary trustees

[1] *Cf. D. C. Matara, 22,946; (1869) Vand. Rep. 37; Piadasse Terunnanse v. Nambi Naide, (1872) Ram. 1872-76, p. 78.*

[2] *Cf. sections 20, 27, 35, 37, 38.*

[3] *Cf. Ratnapala v. Revata, (1858) 3 Lor. 67; Rewate Terunnanse v. Jayawickreme, (1872) Ram. 1872-76, p. 13.*

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give us little help in determining the position, in such a matter as this, of the trustees of a vihare. We have to look to the statute law itself as our principal guide. It appears to me to result by necessary implication from section 30 of the Buddhist Temporalities Ordinance, 1905, that temple property of the character with which we have here to do, held by the trustee of a vihare, can be made executable for judgment debts, except in cases in which a personal liability should be imposed on the trustee himself. Vihares, as we all know, are large landowners. They can and do acquire property, not only in the manner indicated in the Ordinance, but by prescription. It is, to my mind, inconceivable that the Legislature could have intended to invest them, through their trustees, with power to sue, and at the same time to leave their lands beyond the reach of the ordinary law of execution. I would set aside the decree of the District Court, and dismiss the plaintiff's action with the costs of the action and the appeal.

DE SAMPAYO J.—

I entirely agree with the construction put by my Lord the Chief Justice on section 30 of the Buddhist Temporalities Ordinance, No. 8 of 1905. As that section expressly exempts the trustee from liability for costs, it will be doing manifest injustice to hold that the temple on whose behalf an action is brought is not liable for the costs of that litigation, for in that case the successful party would have no remedy whatever. If, as I think, the temple is liable for such costs, it is equally just that the property of the temple should be held liable to be sold in satisfaction of the judgment debt. I should require very strong grounds for holding that the law is otherwise. It is, of course, true that "sanghika" property is inalienable in the sense that the trustee has no power to dispose of it. But that is a different thing from saying that the process of Court is not available against such property for recovery of the amount of a decree.

It seems to me that the opinion of the District Judge that "sanghika" property is *res sacra* and therefore not liable to be seized and sold is based on a misconception of both what "sanghika" property is and what *res sacra* is. "Sanghika" means no more than property belonging to the entire priesthood, that is to say, to the temple, as distinguished from the private property of the priestly incumbent. In this connection it may be remembered that a temple is a corporation, and often acquires property by the ordinary civil modes of acquisition, subject only as regards immovables to a certain rule of *mortmain*. The property seized in this case is not the temple itself, or even the land on which it stands, but certain lands which form part of its temporalities. In my opinion no sacred character attaches to such property. Again,

what is *res sacra?* This expression belongs to the well-known classification of property in the Roman law. *Res sacra* is a subdivision of *res divini juris*, none of which can be the subject of commerce. It is thus described by *Justinian* (*Dig., 1, 8, 6, 3*):— "*sacræ res sunt hæ quæ publice consecratæ sunt, non privatim; si quis ergo sibi sacrum constituerit, sacrum non est sed profanum.*" It will be seen that it is not because a thing belongs to a temple that it is sacred, but because it is consecrated to religion by public authority. *Voet, 1, 8, 5*, commenting on this passage, speaks of *res sacræ* as those which are consecrated by the pontiff or the sovereign to the service of God, and adds, that, therefore, a thing cannot be made *sacra* by private dedication, and much less by the mere vow of the person offering it. He then proceeds to enumerate *res sacræ*, viz., the edifice itself, the vestments, vessels, and other things of the like kind. From this it is clear that *res sacræ* are those things which are necessary for, and immediately connected with, divine worship, and that mere endowments or temporalities of a temple, not being consecrated by public authority in the above sense, nor specially concerned with divine worship, are not *res sacræ*. I find, moreover, that even *res sacræ* are not wholly incapable of being sold. *Voet, 1, 8, 6*, appears to me to be a direct authority on this point, for in that passage Voet discusses the modes by which the sacred character of a thing may cease, and gives this last instance: "*Vel denique justis ex causis alienabantur, puta ad redemptionem captivorum, alimoniam pauperum, æs alienum ecclesiæ exsolvendum, aut ut rei, quæ acclesiæ inutilis est, permutatio fiat cum alia utiliore.*" This shows that a *res sacra* may be sold for the payment of any debt of the church or temple, and much more, I should say, may a mere temporality of the religious institution be sold, especially by judicial process, for the payment of a debt. *Grotius, 2, 1, 15*, says generally, "nothing is so entirely dedicated to God that it may not occasionally be converted to other uses." I may also refer to *Maasdorp's Institutes, vol. II., p. 9*, where the author, referring to the Roman law, which considered *res divini juris* as not the subject of commerce, says, "none of those things, however, are *res nullius* at the present day, but are possessed in full ownership by the individuals or communities to whom they belong, and who may deal with them as such, except in so far as this may be prohibited by any statutory or other legal provision to the contrary." Nothing has been cited to us to show that there is any statutory or other legal provision whereby the ordinary property of a Buddhist temple is exempted from liability for the debts of the temple.

For these reasons I am also of opinion that the plaintiff's action should be dismissed with costs in both Courts.

Appeal allowed.