Present: Bertram C.J. and Dé Sampayo J.

1919.

APPUHAMY *v.* TINANHAMI.

121.—D. C. Kurunegala, 5,489.

Action brought by trustee of a temple—Expiry of term of office before judgment—Payment to trustee—Indebiti solutio—*Buddhist Temporalities Ordinance—Election of trustee—Is formal act of appointment necessary?*

Plaintiff brought this action as trustee of a Buddhist temple. Before judgment his term of office had expired, but he continued, nevertheless, to act as *de facto* trustee. When the property of the defendant was seized in execution, he paid a sum of money to get it released.

The defendant claimed the money back on the ground that plaintiff was not entitled to receive it at the time. At the date of the application plaintiff was re-elected as trustee, but he had not received his formal appointment.

Held, that defendant was not entitled to recover the money paid.

A formal appointment is not necessary to constitute the person elected a trustee.

THE facts are set out in the judgment.

A. St. V. Jayawardene, for appellant.—In terms of section 17 of Ordinance No. 8 of 1905 the plaintiff ceased to be trustee after the lapse of three years from the date of his appointment, so that when

1919.

Appuhamy v. Pinanhami

judgment was entered the plaintiff was not trustee. He had, therefore, no right to execute the judgment. Any money recovered thereunder was so recovered by a person who had no status. (*Appusinno v. Balasuriya.*[1])

The plaintiff has failed to prove his re-appointment as trustee. The letter he produces is signed by the Secretary, and there is no provision in law by which the Secretary may be delegated with the functions of the President, who alone can sign the document, to make it *prima facie* proof of appointment as trustee.

Appellant may have to pay this money over again.

[DE SAMPAYO J.—No court will compel a person to pay twice over.]

Counsel referred to *Mohamadu v. Ibrahim.*[2]

G. Koch, for respondent, not called upon.

February 26, 1919. BERTRAM C.J.—

This was an action instituted by the plaintiff at a time when he was trustee of a Buddhist temple. Before judgment his trusteeship, in accordance with the terms of the Buddhist Temporalities Ordinance, had expired. He, nevertheless, continued to act as *de facto* trustee, and purported to recover judgment in the capacity of trustee of the temple. The property of the defendant was seized under the judgment, and in order to release that property, he paid the amount of the execution debt into Court. He has since discovered that both at the date of the judgment and at the date of the execution the plaintiff was not in fact *de jure* trustee. As a matter of fact, the plaintiff is now *de jure* trustee once more. An election has been held, though no formal act of appointment has been given to the plaintiff; an act of appointment is not necessary to constitute him a trustee. It is sufficient if he has been duly elected, and there seems no doubt that he has been duly elected, and he is, therefore, trustee once more.

What the defendant seeks in the matter now brought before us is this. He wishes to recover part of the money which he paid in execution of the judgment, on the ground that this payment was a case of *indebiti solutio*. I do not think that that contention can be sustained. Judgment had been recovered by the plaintiff in a certain capacity against the defendant; that judgment constitutes, in effect, a declaration that the defendant was indebted to the plaintiff in the capacity in which the plaintiff sued. It was, in effect, a declaration that at the date of the judgment the plaintiff possessed that capacity, and in that capacity was entitled to the money adjudged. The sum, therefore, was due, unless and until the judgment was set aside, and in satisfying the judgment I do not think that the defendant could have been said to have paid a sum not due. The defendant in this Court expresses the apprehension

[1] *(1913) 16 N. L. R. 385.*

[2] *(1895) 2 N. L. R. 36.*

that he might conceivably be compelled to pay this sum over again. Mr. Jayawardene, however, has brought to our notice a case which is fatal to his own contention, namely, the case of *Mohamado v. Ibrahim* [1]. It is there said that no authority is needed to establish the principle that the law will not compel a person to pay a sum of money a second time which he has paid already under the sanction of a court of competent jurisdiction, but a person seeking to benefit by this principle must have done all that was incumbent on him to resist the payment.

In this case the defendant not having had notice of the fact that the plaintiff had ceased to be *de jure* trustee was under no obligation to resist payment of the judgment which was in process of being enforced against him. I do not think that he had any reasonable ground to be apprehensive on the point.

I may say that I have considered the case of *Appusinno v. Balasuriya* [2] cited to us in the course of the argument. I do not think that that case has any application here, because in the present case no new trustee has displaced the person who instituted the suit. What happened in the present case was that there was an interregnum, during which the plaintiff continued to act *de facto* as trustee. I would, therefore, dismiss the appeal, with costs.

DE SAMPAYO J.—I agree.

Appeal dismissed.