1954 *Present :* **Gratiaen J. and Gunasekara J.**

KIRIKITTA SARANANKARA THERO, Appellant, *and* MEDEGAMA DHAMMANANDA THERO *et al.*, Respondents

S. C. 266—D. C. Gampaha, 605/5643L

Buddhist temple—Claim to incumbency thereof—Reference to ecclesiastical court—Binding force of decisions of extra-judicial tribunals—Computation of prescriptive period—Prescription Ordinance (Cap. 55), s. 10.

Persons who voluntarily submit a dispute to an extra-judicial tribunal must abide by its decision unless it be vitiated by misconduct or substantial irregularity of procedure or by a violation of the principles of natural justice.

Plaintiff sued the 1st defendant for a declaration that he, and not the 1st defendant, was the incumbent of a certain Buddhist temple. This dispute had been previously referred to an ecclesiastical court whose decision the rival claimants had (by necessary implication, if not expressly) agreed to regard as binding on them. After the decision of the ecclesiastical court in favour of the plaintiff, the 1st defendant requested him to refrain from enforcing his rights for about a year "until it is settled amicably without getting into litigation". After the period of indulgence asked for had expired, 1st defendant repudiated his obligation to obey the decision of the ecclesiastical court and reasserted his false claim to the incumbency.

Held, (i) that the decision of the ecclesiastical court was binding on the parties and could be enforced in a Court of law.

(ii) that the conduct of the 1st defendant in repudiating the decision of the ecclesiastical court gave rise to a fresh cause of action entitling the plaintiff to claim the protection of a declaratory decree against further interference with his enjoyment of the rights which had been vindicated in the ecclesiastical court. As the present action was instituted within three years of the date on which this fresh cause of action arose, the plaintiff's remedy, which fell within section 10 of the Prescription Ordinance, was not barred by limitation.

APPEAL from a judgment of the District Court, Gampaha.

H. V. Perera, Q.C., with *Kingsley Herat*, for the plaintiff appellant.

N. E. Weerasooria, Q.C., with *S. W. Jayasuriya* and *W. D. Gunasekera*, for the defendants respondents.

Cur. adv. vult.

February 2, 1954. GRATIAEN J.—

The plaintiff instituted this action against the defendants on 23rd March, 1949, for a declaration that he was the incumbent of a Buddhist temple at Gampaha called the Swarnatilleke Ramaya. He also asked for consequential relief in the form of an order of ejectment against the defendants. The defendants filed answer disputing the validity of the plaintiff's claim to the incumbency. They alleged that the 1st defendant (and not the plaintiff) was the lawful holder of that office, and pleaded that in any event the plaintiff's claim was barred by prescription.

With regard to the merits of the dispute relating to the incumbency, the learned Judge has recorded very clear findings that (subject only to his ruling on the issue of prescription) the plaintiff was the lawful incumbent of the temple in succession to Walhalla Ratnapala Thero who died in 1944.

The plaintiff's appointment had previously been upheld on 15th September, 1945, by an *inter partes* decision of the ecclesiastical court of the Malwatte Chapter to whose disciplinary jurisdiction the plaintiff and the 1st defendant, as Buddhist priests, were admittedly subject. In my opinion the learned Judge was perfectly justified upon the evidence in holding that the 1st defendant was bound by that decision. It is no doubt correct to say that the ecclesiastical court was not strictly a judicial tribunal to whose judgments the principles of *res adjudicata* can be applied—*Sumangala v. Dhammarakitta* [1]. Nevertheless, there is an analogous and equally well-established rule of law whereby persons who voluntarily submit a dispute to a non-judicial or domestic forum must abide by its decision unless it be vitiated by misconduct or substantial irregularity of procedure or by a violation of the principles of natural justice—*Dharmarama v. Wimalaratne* [2], *Atiadasi Unnanse v. Rewata Unnanse* [3].

In the present case, as the learned Judge has pointed out, the 1st defendant unequivocally submitted himself to the jurisdiction of the ecclesiastical court as a proper tribunal for adjudicating upon the question as to who was the lawful holder of the office in question. He took part in the proceedings without protest of any kind and placed his case fully before the tribunal whose members were specially qualified to appreciate the merits and demerits of the rival claims. His subsequent allegation that the decision was tainted by bias was rejected by the learned Judge. In that state of things, the decision dated 15th September, 1945, confirming the validity of the plaintiff's appointment is clearly binding on the first defendant.

The reference to the ecclesiastical court did not, perhaps, precisely comply with all the formalities which are appropriate to a formal submission to the jurisdiction of an arbitrator. But that by no means concludes the argument. The parties were (as the 1st defendant admits) Buddhist priests owing allegiance to the Malwatte Chapter, and he concedes in his evidence that their traditional procedure for the settlement of disputes relating to the title to an incumbency is for one party or the other to start proceedings before the Chapter by sending a petition ; the Chapter thereupon issues notice to the party against whom the complaint was made ; and a preliminary investigation of a quasi-judicial nature is then held by one or more priests selected for the purpose, after which a final decision is reached by the Sangha Sabha.

The analogy to be applied is that of a member of an institution who is bound by its rules as to the procedure whereby disputes are conveniently settled without the intervention of the Courts. In the

[1] *(1908) 11 N. L. R. 360.*

[2] *(1913) 5 Bal. N. C. 57.*

[3] *(1928) 29 N. L. R. 361.*

present case, the proceedings which led to the decision relied on by the plaintiff had been conducted regularly and with due formality. It is true that, apart from certain disciplinary sanctions, the Chapter has no power directly to enforce its commands, but it is at this stage that the aid of a Court of law is made available to compel obedience to decisions which have been reached by extra-judicial tribunals in accordance with the principles of natural justice—see *per* Jayawardena J. in *Terunanse v. Terunanse* [1], and the English authorities examined by Morris L.J. in an article entitled " The Courts and Domestic Tribunals " in *69 L.Q.R. 318*.

So far, then, the judgment under appeal cannot be challenged, but the learned Judge has dismissed the plaintiff's action on the ground that the plaintiff's remedy is barred by the provisions of section 10 of the Prescription Ordinance. This issue must now be considered.

An action to be declared entitled to the incumbency of a Buddhist temple is an action for a declaration of a status. As the cause of action in proceedings of this nature has not been " otherwise provided for " in the Ordinance, section 10 applies, and the action must therefore be instituted " within three years from the time when such cause of action shall have accrued "—*Rewatte Unnanse v. Ratnajoti Unnanse* [2] and *Terunanse v. Terunanse* [3]. The " cause of action " is the " denial " of the plaintiff's status because it constitutes either an actual or seriously threatened invasion of his vested rights.

The earlier authorities certainly seem to indicate that, if a trespasser who disputes the status of the true incumbent of a temple continues thereafter to remain in adverse possession without interruption for a period of three years, the dilatory incumbent's right to relief in the form of a declaratory decree becomes barred by limitation under section 10. We must, of course, regard ourselves as bound by these decisions, but with great respect, I think that, on this particular point, the question calls for reconsideration by a fuller Bench on an appropriate occasion. It is clear law that an impostor cannot acquire a right to an incumbency by prescription ; nor can the rights of the true incumbent be extinguished by prescription. Although the operation of section 10 may destroy the remedy accruing from a particular " denial ", the right or status itself still subsists. It is true that the lawful incumbent can take no steps after three years to enforce his remedy *if it is based exclusively on that particular " denial " of his status*, but there is much to be said for the argument that a continuing invasion of a subsisting right constitutes in truth a continuing cause of action. Indeed, the contrary view would indirectly produce the anomalous result of converting the provisions of section 10 into a weapon for the extinction of a right which cannot in law be extinguished by prescription.

Be that as it may, the circumstances of the present case, interpreted by reference to the conduct of the parties, are clearly distinguishable from those which arose in the earlier decisions. The dispute as to the

[1] *(1928) 6 T. C. L. R. 22 at 25.* [2] *(1916) 3 C. W. R. 193.*

[3] *(1927) 28 N. L. R. 477.*

plaintiff's title to the incumbency had been left in a state of abeyance pending an extra-judicial investigation by the ecclesiastical court whose decision the rival claimants had (by necessary implication, if not expressly) agreed to regard as binding on them. After the decision of the Malwatte Chapter in favour of the plaintiff was communicated to the parties, the 1st defendant wrote a letter dated 8th October, 1945, (P12) to the plaintiff requesting him in effect to refrain temporarily from enforcing his rights and " to be patient for about a year until it is settled amicably without getting into litigation ". In compliance with that request (to use the 1st defendant's own words) " the plaintiff kept quiet for an year ". After the period of indulgence asked for had expired, the 1st defendant repudiated his obligation to obey the decision of the Malwatte Chapter " without getting into litigation ", and reasserted his false claim to the incumbency. Such conduct necessarily gave rise to *a fresh cause of action* entitling the plaintiff to claim the protection of a declaratory decree against further interference with his enjoyment of the rights which had been vindicated earlier in the ecclesiastical court. As the present action was instituted within three years of the date on which this fresh cause of action arose, the plaintiff's remedy was not barred by limitation. The judgment under appeal was wrongly decided on this point, and should therefore be set aside. I would enter a decree in favour of the plaintiff as prayed for with costs both here and in the Court below.

GUNASEKARA J.—I agree.

Appeal allowed.