

28 AUG 1901
MADEIRA

THE
RELIGIOUS ENDOWMENTS ACT.
ACT XX. OF 1863.

(WITH NOTES.)

BY

K. S. VENKATRAMA IYER B.A.,

First Grade Pleader

Negapatam.

FIRST EDITION.

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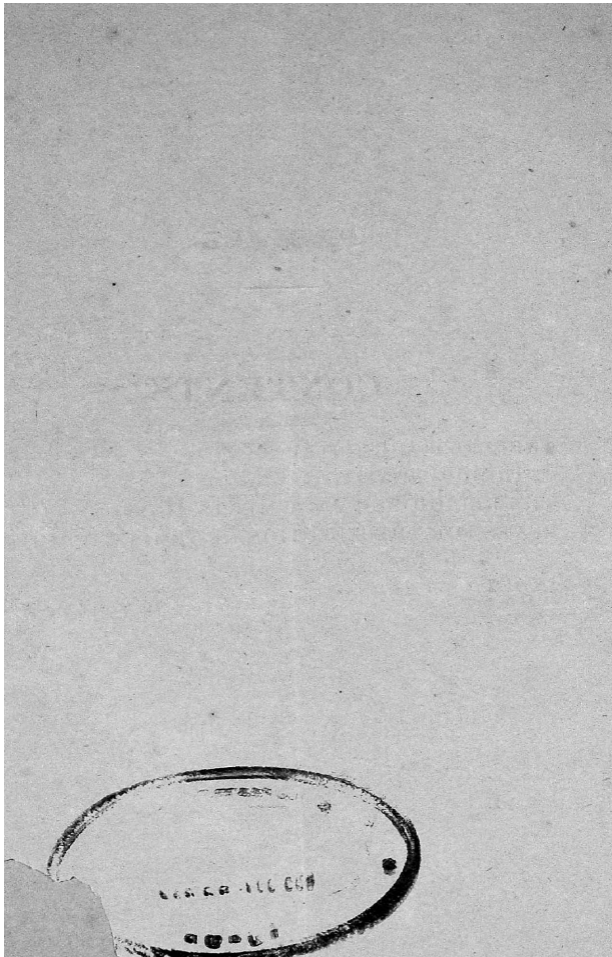
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PREFACE.

In preparing this book I do not purport to do more than place within the reach of the profession the various decisions on the subject. I have as far as possible collected and arranged them under appropriate sections. I have also subdivided the notes by suitable headings to facilitate reference ; and added a table of cases cited an index of the ralings quoted and the Rules for the elections of Temple Committee members. I crave the indulgence of the public for the errors and omissions of which there may be several. I hope this my first endeavour will meet with the good wishes of the public.

NEGAPATAM ?
25th May 1901. }

K. S. VENKATRAMAN.



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RULES FOR THE ELECTION OF TEMPLE COMMITTEE
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CORRIGENDA.

Page 2 line 34 for misfearance read misfeasance.

Page 4 line 21 for fof read of.

Page 6 line 24 for institutie read institute

Page 8 line 19 for uomination read nomination.

Page 9 line 1 for uominated read nominated

Page 9 line 28 for initating read initiating

Page 9 line 31 after not read in

Page 13 line 11 for officers read offices

Page 14 line 21 for implies read imples

Page 16 line 22 for doe read does

Page 16 line 31 for defact read defacto

Page 20 line 12 for corporte read corporate

Page 32 line 20 for incombent read incumbent

Page 33 line 19 for is read are

Page 41 line 1 for vn read In

INTRODUCTION.

IN the Presidency of Madras the Government assumed the management of Hindu Temples under Regulation VII of 1817. It worked with an unqualified success. But in consequence of agitation in England that the administration of the funds of Hindu Temples should not be in the hands of Governors professing a different faith, the Government withdrew from its direct management of Hindu Temples in 1842. However no legislative enactment was passed till 1863 and it was in 1863 that Act XX of 1863 was passed and provisions were made by constituting a new machinery to take the place of the Board of Revenue which exercised control under Regulation VII of 1817. The Act has however been condemned from the commencement of its operation as very unsatisfactory. The condition of the Hindu Endowments has been the subject of much discussion for many years; and the mismanagement of many a temple and the deplorable misappropriation of the funds of many temples and the unsatisfactory working of the temple committees are too well known to the general public to need any discussion. Under the Act, Members of the committees are elected for life and several institutions were committed to the hand of hereditary trustees without any sort of outside control. The Act does not exempt such trustees from Criminal Prosecution but such instances are rare. The complainant in such a case has nothing personally to gain by his success but he has a great deal to lose in the event of failure; and the difficulties of launching a criminal prosecution are greater especially when the opponent is a powerful man possessed of a long purse and when the complainant can have no access to the accounts of the management which the trustee is not bound to publish. Instances of civil suits are even rarer as the cost of a civil litigation is generally very heavy and the plaintiff has much to lose though nothing to gain.

The Act no doubt makes provision for the due management of the institutions under Temple Committees. Even here matters do not seem to fare better. If a member of the Committee happen to be a party to the mismanagement or misappropriation of Temple funds there are no means of checking him except by a

civil suit or a criminal prosecution, which certainly involves considerable expense and trouble though there may be no reward or gain to the prosecutor.

Several bills to remedy the existing evils & to safeguard the interests of the religious endowments from malversation and waste were prepared from time to time by the Government of Madras and submitted to the Government of India for approval; and the Government of India declined to make any move in the matter. Even the recent attempt of the Honourable P. Ananda charlu did not find favour with the Government.

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RELIGIOUS ENDOWMENTS.

ACT NO. XX OF 1863.

Passed on the 10th March 1863.

An act to enable the Government to divest itself of the management of religious Endowment..

Whereas it is expedient to relieve the Boards of Revenue, and the Local Agents, in the Presidency of Fort William in

Preamble. Bengal and the Presidency of Fort St. George, from the duties imposed on them by Regulation

XIX of 1810 of the Bengal Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges, and other purposes; for the maintenance and repair of Bridges, Serais, Kattras, and other public buildings; and for the custody and disposal of Nazul property or Escheats*), and Regulation VII of 1817 of the Madras Code *for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, and colleges, or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams and other public buildings, and for the custody and disposal of Escheats*), so far as those duties embrace the superintendence of lands granted for the support of Mosques or Hindu temples, and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such Religious establishments:—

It is enacted as follows:—

Act XX of 1863 has been extended to Canara by Act VII of 1865. This Act is declared to apply to the whole of the British India except the Scheduled Districts, Act XV of 1874.

There is nothing in the Act to oust the jurisdiction of the ordinary Courts over suits to establish a right to share in the management.

3 M. H. C. R. 193.

(Cases under the Act.)

The members of a Temple committee appointed under Act XX of 1863 cannot file a suit against one claiming to be the hereditary trustee of a Hindu Temple for possession of the temple property ; but a suit for a declaration that the temple in dispute is one of the class mentioned in Act XX of 1863 will lie.

(*Guruvu V. Subbarayuda*)

I. L. R. 12 Madras 366.

The operation of Act XX of 1863 will not be excluded merely because there is an admission that the trusteeship was hereditary. In such a case the District Judge has power to deprive persons of the right of a puja, who have been guilty of misconduct in respect of temple property in their custody.

(*Natesa V. Ganpathi*)

I. L. R. 14 Madras 103.

The District Judge has jurisdiction to remove a hereditary trustee of a public trust for breach of trust in a suit under Civil Procedure Code, S. 539, (*Narasinha V. Ayyan* [I. L. R, 12 Madras 157] considered)

(*Subbaya V. Krishna*)

I. L. R. 14 M. 183.

The trustee of a public religions institution can be sued under the provisions of the Religious Endowments Act, 1863, notwithstanding the fact that the institution came into existence after Regulation VII of 1817 was passed.

(*Sivayya V. Rami Reddi*)

I. L. R 22 Madras 223.

Cases not Governed by the Act.

A suit for the recovery of immoveable property on behalf of a temple alleging by way of misfeasance and breach of trust that the

managers had forged documents and usurped temple property without any prayer for the removal of the managers or the damages or for a decree for any specific performance of any act by the managers, is not a suit for which a special jurisdiction is provided by this Act.

(*Mahalinga Rao V. Venkoba Gossain*) I. L. R. 4 Madras 157.

A transferee of trust property, under a transaction which amounts to a breach of trust on the part of the trustee of the institution cannot be proceeded against under the provisions of the Religious endowments Act 1863.

(*Sivayya V. Rami Reddi*) I. L. R. 22 Madras 223.

Act XX of 1863 does not apply to a suit by the Dharmakarthas of a Temple to compel the defendant as heir of the late manager to make good the deficiency in the Temple Funds caused by breach of trust and misappropriation by the late manager. The right of instituting such suits is a right pre-existent to the passing of this Act and is based on the general principles of law.

4 M. H. C. R. 2.

Suit for the construction of a will, and for a declaration of the Plaintiff's rights thereunder as members of a certain brotherhood and to have property dedicated by the will to religious purposes ascertained and secured, does not fall under Act XX of 1863 but come under the ordinary jurisdiction of the Court

(*Panch Cowrie Mall V. Chumroo Lall*) I. L. R. 3 Calcutta 563.

If the trusts of an institution were in the nature of private trusts, the jurisdiction of subordinate courts is not ousted by Act XX of 1863.

(*Sathappayyar V. Periasawmy*) (I. L. R. 14 Madras 1.)

If the endowment is not of a public character, no suit for malversation is sustainable under this Act.

I. L. R. 3 Bombay 324.

The Act has been held not to be applicable to an endowment which is made for the benefit of an ancestral family idol.

(*Protap Chandra Missers V. Brojo Nath Misser*)

I. L. R. 19 Calcutta 275.

If a trust to which a suit related was one partly for charitable, and partly for religious purposes, it was held that as far as it related to the former, it was governed by section 539 of the Civil Procedure Code and if viewed in the light of the latter by Act XX of 1863.

(Latifunnissa Bibi V. Nazirun Bibi)

I. L. R. 11 Calcutta 33.

A mosque becomes consecrated for public worship either by a delivery to mutwalli or on the declaration of the wakff that he has constituted it into a musjid or on the performance of prayers therein.

I Calcutta W. N. 76.

Grants to an individual in his own right and for the purpose of furnishing him the means of subsistence do not constitute an endowment.

8 Calcutta 313.

The Jurisdiction given to courts by Act XX of 1863 cannot be excluded by any clause in a deed of endowment.

(Syed Imdad Hossein V. Mahomed Ali Khan.)

23 W. R. 150.

A suit for the removal of the present mohunt of a religious endowment and for the appointment of the petitioner in his place is not of such a nature as is contemplated by Act XX of 1863.

(Kishore Bon Mohunt V. Kalee Churm Giree.)

22 W. R. 364.

In bringing a suit under Act XX of 1863, it is not necessary to show that the temple was one which was formerly under control of the Board of Revenue.

(Ganes Singh V. Ram Gopal Singh)

5 B L. R. App. 55.

Act XX of 1863 only applies to certain religious trusts and endowments which had been or might come to be under the management of the Government.

(Kali Churn Giri V. Golabi)

2 C R. 128.

(Costs.)

Where a suit is for the benefit of a trust and no party to the suit is in fault, the court may order the costs to be paid out of the estate : but where a person is in fault no such order ought to be made.

(*Sookram Das V. Nund Kishore Doss*)

22 W. R. 21.

The Hindu Law unlike the English Law with respect to charities, makes no distinction between a religious endowment having for its object the worship of a household idol and one which is for the benefit of the general public.

• (*Rupa Jagshetu V. Krishnagi Govind*)

I. L. R. 9 B. 169.

The Courts will not recognize a deed of gift made under the guise of religious endowments but which are intended to evade the law against perpetuities.

(*Abdul Fater Mahomed Ishak V. Russomoy Dhur Chowdhry*)

22 I. A. 76.

See. 18 M. 201 where the wakff was held invalid as contravening the rule against perpetuities.

The *Sajjadunashin* of the *Sasseram Kankah* is not liable to be assessed with income-tax under the provisions of Act II of 1886, in respect of such moneys as he draws from the *Kankah* properties for the purpose of his own maintenance.

(*The Secretary of State for India in Council, V. Mohiaddin Ahmed*),

I L. R. 27 Cal. 674.

9. Where the *Archaka* or officiating priest of the temple has been managing the affairs of a temple with the knowledge and privity of the worshippers, the presumption is that he is the trustee as well as the *Archaka*.

(*Ramaswami V. Ramaswami*)

2 M. L. J. 251.

A woman is not competent to perform the duties of *mujavar* of a *Durga* which are not of a secular nature.

(*Mujavar Ibrambibi V. Mujavar Hussain Sheriff*)

I. L. R. 3 M. 95.

2. In this Act words importing the singular number shall include the plural, and words importing the plural number shall include the singular :

Words importing the masculine gender shall include females :

The words " Civil Court " and " Court " shall mean the principal Court of original civil Jurisdiction in the District in which the mosque, temple or religious establishment is situate, relating to which or to the endowment whereof any suit shall be instituted on application made under the provisions of this Act.

3. In the case of every mosque, temple, or other religious establishment to which the provisions of either of the Regulations specified in " the preamble of this Act " are applicable, and the nomination of the trustee, manager or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act make special provision as hereinafter provided.

An order of a District Court refusing leave to institute a suit and deciding that a temple was within section 3 of the Act is not conclusive upon the questions of title between the parties.

4 M. H. C. R. 410.

No leave of the Court is necessary, for a suit by the Temple committee to establish their right of control under Section 3 of the Act.

(*Venkatasa Naidu V. Sadagopasama Iyer*)

4. M. H. C. R. 404.

4. In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or Superintendent, whose nomination shall not vest in, nor be subject to the confirmation of, the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or Superintendent all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue, or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided ;

Transfer to trustees,
&c, of trust property
in charge of Revenue
Board.

and the powers and responsibilities of the Board of Revenue and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent previous to such transfer, shall cease and determine.

Cessation of Board's
powers as to such pro-
perty.

The owner of a private mutt who had been dispossessed by the Collector under Regulation VII of 1817 for misconduct, acquired an immediate right to the restoration of the property on the passing of this Act, as the endowment fell under this section and not under Section 5.

5 M. H. C. R. 234.

A committee appointed under this Act have no right to call for accounts from trustees of temples which are within this section.

(Venkatabalakrishna Chettiyar V. Kalianaramiengar)

5 M. H. C. R. 48 and

(*Ramiengar V. Gnana Sambanda Pandara Sannadhi*)

5 M. H. C. R. 53.

After the death of the Maharajah of Tanjore in 1855 Government took possession of the Temples under his management by an Act of State but regranted the properties to his senior widow in 1862. The widow was holding the endowments till her death in 1892. Government ordered that they should be placed under the Devastanam Committees. Held that the senior surviving widow was entitled to possession and the right of management by succession.

(*Kaliasundram Aiyar V. Umamba Bayi Sahib*)

I. L. R. 20 M. 421.

Succession.

Where property has been devoted exclusively to religious and charitable purposes, the determination of the question of succession depends upon the rules which the founder of the endowment may have established.

(8. M. H. C. R. 63)

If there is no special provision in the endowment for the appointment of trustees the right of nomination remains vested in the founder of the endowment and the right to nominate continues in his heirs. (*Gosamee Sree Greedharrcegee V. Rumanlokjee Gosamee referreh to*) (*Sheoraten Kunwari V. Ram Purgash*)

I. L. R. 18 All. 227

Where there is no special provision in the original grant as to the right of succession to the property left by the deceased head of a religious institution, the only law to be observed is to be found in custom and practice which must be proved by evidence (*Genda Puri Chater Puri* I. L. R. 9 All).

This case is followed in (*Basded Garib Das* I. L. R. 13 All 256,) where it has been held that the question who is entitled to succeed to the office of a deceased mahant must in each case be decided upon the evidence as to the customs relating to succession observed by the particular sect to which the deceased mahant belonged.

There may be a custom that a successor, is nominated by the Head of the institution and after his death the successor is installed and confirmed by the other follower of the sect (*Genda Puri V. Chaten Puri I. L. R. 9 All 1*). Similarly it has been held that succession as shebait of a religious institution takes place according to the established usage (*Janoki Debi V. Gopal Achargie Goswami*). I. L. R. 9 Cal 766.

There may be an usage that the Head of a mutt affiliated to an Adhinam, is entitled to appoint his successor though his election is limited to a member of the Adhinam; and the Head of the Adinam is entitled to enforce this rule though he is bound to invest a disciple properly nominated by the Head of the mutt. (*Giya-na Sambhandha Pandarasannadhi V. Kandasami Thumbiran*) I. L. R. 10 M 375.

There may be an usage that the Head of a religious institution nominates his successor by appointment during his life time or by will (*Trembakpuri garu Sitalpuri V. Gangabai I. L. R. 11 B. 514*) and this nomination may require confirmation by the members of the religious body. The right of election may sometimes be vested in them. (*Madho V. Kamta I. L. R. 11 Ali 539*). So if a jeer is appointed by election among the disciples a suit by some of the disciples without holding an election, to reject another who claims to be the jeer, is not maintainable. (*Srinivasaswami V. Ramanujachariar I. L. R. 22 M. 117*).

If according to the established usage relating to the succession to the office of Dharmakartha of a Devasthanam, the succession was provided for by each successive Dharmakartha initiating a pandaram, while in office, the appointment by one who had already ceased to hold the office (having been removed under Act XX of 1863 Sec 14) is not accordance with usage and is invalid. (*Ramalingam Pillai V. Vythilingam Pillai*) I. L. R. 16 M. 490.

Persons who claim that they as members of a fraternity to which the deceased belonged are entitled to succeed to the properties possessed by him, must prove that the deceased was a member of the sect (*Gajraj Puri V. Achabar Puri I. L. R. 16 All 191.*)

The right of managing a temple may be reserved in the family of the trustee himself or the founder may reserve to himself some special powers of supervision, removal or nomination. In such a case the right of management cannot pass outside the family of the trustee, until absolute failure of succession and such rights are not saleable in execution of a decree.

(*Dunja Bibi V. Chanchal Ram*)

I. L. R. 4 All 81.

The mere succession of a son to a father in a trusteeship of a temple does not create an hereditary right (*Appasawmy V. Nagappa* I. L. R. 7 M. 499).

In Malabar when the right to superintend a mosque is in dispute, the Muhammadan Law of succession must be applied unless a custom to the contrary is proved.

(*Kunhi Bivi Shariff V. Abul Avir*) I. L. R. 6 M. 108.

As to succession to a jeer of a mutt-See *Rangachariar V. Yegne Dikshithar* I. L. R. 13 M 524.

It being clearly implied by all the authorities that a sudra cannot enter the order of yathi or sanyasi, the devolution of property left by a deceased person of the said caste, who has become an ascetic is regulated by the ordinary Law of inheritance in the absence of proof of any general or special usage to the contrary. (*Dharmapuram Pandara Sannadhi V. Virapandiyan Pillai* I. L. R. 22 M. 302)

If the holder of a hereditary office in a temple is dismissed for misconduct and another person is temporarily appointed by the committee, the son of the holder is entitled to the office.

(6 M. L. J. 255).

Limitation.

Where the management of an endowment is vested in a certain family by the founder, each member succeeds to the management unaffected by any rules of limitation affecting his predecessor.

(*Trimbak Bawa V. Narayna Bawa*) I. L. R. 7 B. 188.

Marriage

There may be cases in which the paradesi or head of a mutt might be a married man provided he had been duly initiated.

(*Sathappayyar V. Periasami*) I. L. R. 14 M. 1.

Amongst the Gosains of the Decean and certain other places marriage does not work a forfeiture of the office of mahant and the rights and property appendant to it (*Gosain Rambharti Jagrupbharti V. Mahant Sinajbharti Haribarti* I. L. R. 5 B. 682).

Disqualification.

Leprosy must be of avirulent form in order to disqualify a mohunt from adopting a successor, by preventing him from taking part in the religious ceremonies of adoption (*Mohunt Bhagavan V. Mohunt Raghunandan* 22 I. A. 94).

Kazi.

The office of Kazi is not hereditary I. L. R. 1 B. 633 and I. L. R. 3 B. 72 unless perhaps by special custom (*Babu Kakajishet Shinggi V. Nassaraddin* I. L. R. 18 B. 103).

5. Whenever from any cause a vacancy shall occur in the office of any trustee, manager or superintendent to whom any property shall have been transferred under the

Procedure in Court of
dispute as to right of
succession of vacated
trusteeship, &c.

last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful

for any person interested in the mosque, temple or religious establishment to which such property shall belong or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple, or other religious establishment; and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

The manager so appointed by the Civil Court shall have and shall exercise all the powers, which, under this or

any other act, the former trustee, manager, or superintendent in whose place such manager is appointed by the Court had or could exercise, in relation to such mosque, temple, or religious establishment, or the property belonging thereto.

Powers of manager
appointed by Court.

Under section 5, the appointment is in the discretion of the Court.

(*Khaji Ashruf Hossein V. Mossanent Hozara*),

18 W. R. 396.

The District Court has no power to fill a vacancy unless property has been actually transferred to the former trustee by the Revenue Board under section 4.

(*Ittini Pannikkar V. Irani Namburipad*),

I. L. R. 3 M. 401.

An appeal lies against an order of a District Court under this section.

(*Sultan Akeni Sahib V. Sheikh Bava Melumiyar*),

I. L. R. 4 M. 295.

This case is in effect overruled by the decision of the Privy Council reported in (*Minakshi Naidu V. Subramania Sastri* I L R. 11 M. 26,) though this decision was given with reference to an order made under section 10: The Madras High Court has however held that no appeal lies from an order passed under section 5 (*Somasundara Mudaliar V. Vythilinga Mudaliar*) (6 M. L. J. 92 or 19 M. 285). The Madras Law Journal questions the correctness of this decision as section 5 seems applicable only where the trust is hereditary and the dispute is as to who shall succeed to the trust and not to a case like this where the hereditary character is itself denied and the Court makes no enquiry whether it is a hereditary trust or not and appoints a manager.

Where the institution is one falling under section 4 of the Act, and where the person claiming to succeed to the office of trustee on the ground that it is hereditary, is opposed by another who denies

any such hereditary right, the District Court has jurisdiction to pass a summary order under section 5.

(*Somasundara Mudaliar V. Vythilinga Mudaliar.*)

(6 M. L. J. 92 I. L. R. XIX M. 285).

An application by a petition under section 5, to be appointed manager of a religious endowment, was rejected by the Judge after hearing both sides on the ground that there was no transfer of property by the Local Government under section 4.

(*Khaje Ashruf Hossein V. Mussamet Hazara Begum.*)

18 W. R. 396.

Alienation of Religious Officers.

Hereditary offices whether religious or secular are no doubt treated by the Hindu writers as naturally indivisible : but modern custom has sanctioned such partition by means of a performance of the duties of the office and the enjoyment of the emoluments by the different coparceners in rotation.

(*Macharam V. Pranshankar*)

I. L. R. 6 B. 298.

An alienation which may defeat the object of the endowment or be inconsistent with the presumed intention of the founder is bad.

(*Mancharam Bhagvanbhat V. Pranshankar Gurus Shankar*)

I. and R. 7 B. 217.

A priestly office with emoluments attached is inalienable.

(*Srimati Mallika Dasi V. Ratanmand Chakervarti.*)

1 Calcutta W. N. 493.

An archaka cannot sell the office and emoluments of Paricharaka inasmuch as they are extra commercium.

(*Narasimma Thatha Acharya V. Anantha Hatta*)

I. and R. 4 M. 391.

As to a case in which a Transfer of a religious office was held invalid, (See *Narayana V. Renga* I. L. R. 15 M. 183)

Where the holder of a religious office alienated it to one out of four persons who were entitled to succeed him, held that the

alienation was invalid although a mere relinquishment in favour of a sole next heir by way of anticipating his legal right might be valid.

In (*Kuppa Gurukkal V. Durasawmy Kurukkal* I. L. R. 6. M. 76.) it has been held that the sale of a religious office to a person not in the line of heirs, though otherwise qualified for the performance of the duties of the office is illegal.

A Mahomedan office to which are attached substantially the conduct of religious duties is not legally saleable, any custom to the contrary notwithstanding.

Sarkum Abu Torab Abdul Wahab V. Rahaman Buksh.)

I. L. R. 24. Cal 83.

Though the property of a temple cannot be sold the right, title and interest of the servant of a temple in the land can be sold. The interest sold will be determined by the death of the original holder or by the removal of the original holder from office.

(*Lothkar V Wagle*)

I. L. R. 6. B 596.

Where a custom relied on as sanctioning the transfer of the office of a trustee and its duties to a person unconnected with the families from which the trustees are to be taken, implies the right to sell the trusteeship for the pecuniary advantage of the trustees, that circumstance alone may justify a decision that the custom relied on is bad in law.

(*Rajah Varma Valia V Ravi Varma Kunhi Kutti.*)

I. L. R. 1. M. 235.

The appointment of a committee of headmen in a Roman Catholic Church by the Bishop to assist the Vicar in the secular affairs of the church gives the members no right to close the church or oust the Vicar and still less to appoint a priest not under the discipline and obedience to the church of Rome.

(*Narian Pillai V Bishop of Mylapore.*)

I. L. R. 17 M. 447.

A Karaima right in a pagoda is unsaleable.

(*Kanni V. Achuda.*)

3. M. H. C. R. 380.

The office of Archaken in a temple is inalienable.

(*Venkataramayyar V Srinivasaiyangar.*)

7. M. H. C. R. 32.

The inalienability of the office of trustee is settled by the decision of the Privy Council in (*Raja Varma Valia V. Ravi Varma Kunhi Kutti*) reported in I. L. R. 1. M 295, which confirmed the decision of the Madras High Court in *Rajah of Cherakal V. Mooth Rajah*) 7. M. H. C. R. 210.

The principle of the above decisions was extended in (*Ram, Varma Thambaran V Raman Naryan*) I. L. R 5. M. 89.

6. The rights, powers, and responsibilities of every trustee, manager, or superintendent to whom the land and other property of any mosque, temple, or other religious establishment is transferred in the manner prescribed in Sec. 4 of this Act, as well as the conditions of their appointment, election, and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple, or religious establishment, and over such trustee, manager, or Superintendent, which authority is hereby determined and repealed.

Powers of trustees,
&c, appointed by court.

All the powers which might be exercised by any Board or local agent, for the recovery of the rent of land or other property transferred under the said Section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager or Superintendent to whom such transfer is made.

If a portion of a Joint Family property is reserved by the members for the expenses of the festivals &c, of an idol and if such portion had not been transferred from the family and dedi-

cated to the idol, a partition of the said property can be made but subject to a trust in favour of the idol.

(*Ram Coomaur Paul V. Jogendu Nath Paul*)

I. L. R. 4 Cal. 56.

Religious endowments are not alienable. The annual revenues may for purposes essential be occasionally pledged. The essential purposes may be (1) the proper expenses for keeping up the religious worship (2) repairing the temples or other possessions of the idol, (3) defending hostile litigious attacks and other like objects. The power to incur such debts must be measured by the existing necessity.

(7 M. H. C. R. 210 approved) in

(*Narayan Chintaman*. I L. R. 5 Bombay 393 and

(*The Collector of Thana V. Hari Sitaram*. I. L. R. 6 Bom. 546.

The manager of a *debutter* estate has for purposes of the endowment, power to raise money by alienating a part of the estate, his position being analogous to that of a manager of an infant heir under Hindu Law.

(*Konwar Doorganath Roy V. Ramchunder Sen*)

I. L. R. 2 Cal. 341.

The property belonging to a *mattam* is in fact attached to the office of *mattamdar* and passes by inheritance to no one who does not fill the office. He can apply the property to any purpose in furtherance of the objects of the institution. He may contract debts for purposes connected with the endowment and it would devolve as a liability on his successor to the extent of the assets received by him.

(*Sawminatha Pandaram V. Sellappa Chetti*)

I. L. R. 2 M. 175.

The principles of *Hanooman Persand Pandey's* case apply to the alienation of property by the defunct manager of an Hindu Endowment. The possession of such manager cannot be treated as adverse to the Endowment (*Sheo Shankar Gir V. Ram Shewak Chowdhri*) I. L. R. 24 Cal. 77.

Article 91 of Schedule II of the Limitation Act has no application to a suit to set aside such alienation. If the person who

executes the document had no authority in law to execute it, the plaintiff need not sue to set it aside, but may treat it as of no effect.

(*Sheo Shankar Gir V. Ram Shewak Chowdhri*)

I. L. R. 24 Cal. 77.

Where a shebait granted a mourasi mokurari lease of a portion of the debutter property, such lease being granted without any legal necessity, such lease is void.

(*Prosunno Kumar Adhikari V. Saroda Prosunno*)

I. L. R. 22 Cal. 989.

The trustee of a temple has no right to make a permanent alienation of temple lands i. e. a permanent lease of temple property in the absence of proved necessity: but if it is proved and the lease had been enjoyed for a long time, the lease cannot be disturbed.

(*Chockalinga Pillai V. Mayandi Chettiya*)

6 M. L. J. 247.

Where a trustee does any act in breach or repudiation of the trust such act is not binding on his successor in the trust.

(*Shri Ganesh Dharindhar V. Kerhvaran Govind.*)

I. L. R. 15 B. 625.

Grants of lands by the manager of a temple though not for a necessary purpose will not bind his successor.

(*Shankarbava Dravid V. Naryan Dravid*)

I. L. R. 19 B. 271.

When immoveable property is wrongfully alienated by a trustee, his immediate successor in the office is entitled to bring an action to recover possession at any time within 12 years from succeeding to such an office.

(*Jewun Doss Sahoo V. Shah Kubeer-ood-deen*)

6 W. R. 3 Pc.

(*Vedapuratti V. Vallabha*)

I. L. R. 13 M. 403.

(*Sathiunama Bharati V. Saravanabhaji Ammal*)

I. L. R. 18 M. 266.

The possession held by virtue of a wrongful alienation is therefore not adverse to the trust. The trustee himself who wrongfully alienated, has the right to set right the wrongdone by suing for the recovery of possession.

(*Syed Gulam Nabi Sahib V. Najammal*)

6 M. L. J. 270.

A tree planted by a mutavalli of a shrine on land belonging to the shrine belongs to the shrine and cannot be attached for a money decree against the mutavalli.

(*Nurbibi V. Maganlal Parbhudas*.)

I. L. R. 16 B. 547.

Land originally dedicated to an idol by the member of a family but subsequently taken by the Government as an escheat and again purchased by the members of the same family from the escheat department of Government is liable to be sold.

(*Mallan V. Purushotama*)

I. L. R. 12 M. 287.

As to the rights and guardians of a temple in Malabar see
(*Cherukkunneth M. N. V. Vengunat S P R V V N*.)

I. L. R. 18 M. 1.

7. In all cases described in Section 3 of this Act the Local Government shall, once for all, appoint one or more Committees in every Division or District, to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the regulations hereby repealed.

Such Committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

Though Committees constituted under the Religious Endowment Act, 1863, are not strictly corporations, their procedure in matters relating to the management of properties and trustees under their control should be governed by the rules applicable to

regular corporations. Where a committee consists of seven members, and a meeting is held at which five are present and a resolution is unanimously passed that at future meetings three should form a quorum, and a resolution of a dismissal is unanimously passed by three who were present at a meeting and is confirmed at a subsequent meeting it was held that the order of dismissal was correct (*Anantanarayana Iyer V. Kuttalam Pillai*) I. L. R. 22 M. 481.

It is however an open question whether unanimity of the committee might not have been necessary in the event of business being transacted otherwise than at a meeting.—

The power of suspension by the committee is the same as the power of dismissal. The committee, having made due enquiry and called on the trustee for an explanation, may suspend for good and sufficient cause, but not otherwise. As a trustee cannot be suspended except for good cause shown, he is entitled to damages from the committee for wrongful suspension. But Justice Davies holds a contrary view. He says the committee having proceeded in the bonafide belief that they were acting for the good of the temple in suspending the plaintiff pending enquiry, the order of suspension was not illegal and therefore the plaintiff was not entitled to damages.

(*Seshadri Iyengar V. Nataraja Iyer*) I. L. R. 21 M. 179.

Powers of committee.

A committee appointed under this section have power to dismiss trustees, without having recourse to a Civil Suit, but only on good and sufficient grounds.

(*Chinna Rangaiyengar V. Subraya Mudali*) 3 M. H. C. R. 334 and 338

The dismissal of a trustee of a pagoda must be at least by a majority of the committee and the appointment of a trustee and the dismissal of the existing trustees by three out of six members who formed the District Committee, the other three refusing to sign the order of dismissal was held invalid.

(*Panduranga Annachariar V. Iyathorai Mudali*) 4 M. H. C. R. 443.

The appointment of a permanent Dharmakarta of a temple in 1842 and the withdrawal of Government interference is a bar to the jurisdiction of the committee appointed under the Act.

7 M. H. C. R. 77.

In a case in which one member of a Devasthanam committee consisting of five, initiated an enquiry into the conduct of a Dharmakarta and submitted the results of his enquiry to two other members and the three members after having called upon the Dharmakarta to explain his conduct, which was however not done by the Dharmakarta, signed and issued a resolution dismissing him from his post, it was held that the dismissal was illegal, that the Dharmakarta could be removed only by the corporate act of the committee and that the acts of the committee must be performed at a meeting convened after due notice to all the member of the body.—

(*Thandavaraya Pillai V. Subbaiyar*) I. L. R. 23 M. 483.

The members of a temple committee are not entitled as against the trustee or manager to be put in possession of the property of the temple or to the receipt of its income.

(*Punduranga V. Nagappa*) I. L. R. 12 M. 366.

The duty of a devasthanam committee consists, primarily, in seeing that its endowments are appropriated to their legitimate purposes and are not wasted. It is not a part of the duty of such a committee to interfere with the trustees in matters relating to rituals.

(*Thiruvengadathiyangar V. Srinivasa Thathachariar*) 22 M. 361.

Mere error in judgment on the part of a member of a Devasthanam committee is not sufficient to disqualify him from continuing to hold such office. To justify the removal of such an office holder, it must be shown that the further holding by him of the office is incompatible with the interests of the temple under the charge of the committee of which he is a member.

(*Thiruvengadathaiyangar V. Srinivasa Thathachariar*) I. L. R. 22 M. 361.

The appointment of a Dharmakarthha by a Sub-Collector after the passing of Act XX of 1863, cannot give him any right to the management of the endowment.

(*Mahomed V. Ganapathi*) I. L. R. 13 M. 277.

A committee can appoint a sivite to be the trustee of a vaishnavite temple.

(*Gandavatharayungar V. Devanayaga Mudali*) I. L. R. 7 M. 222.

A temple committee may appoint new trustees when there is no hereditary trustee to add to the existing trustees but this power must be exercised reasonably and in good faith and according to the principle laid down in section 49 of the Indian Trusts Act. If it is not so exercised, the power may be controlled by a Civil Court of Original Jurisdiction.

(*Sheik Davud Sahib V. Aussin Sahib*) I. L. R. 17 M. 212,

4 M. L. J. 48.

A committee appointed under Act XX of 1863 may, without leave of the Court previously obtained, sue their manager or Superintendent, for damages for misappropriation, and for an injunction. The provisions of section 14 do not apply to such suits by the committee themselves.

(*Puddolabh Roy V. Ramlgopal Chatterjee*) I. L. R. 9 Cal. 133

Committees are appointed once for all by Government and they have no power to fill up vacancies (G. O. J. D. 18th September 1880 No. 2275).

The committee might validly appoint new trustees where the right of management is not hereditary.—Regular Appeal No. 31 of 1888 of the Madras High Court.

A general trustee of a temple appointed by the committee under Act XX of 1863, is entitled to resort to the ordinary courts to obtain all appropriate reliefs for the protection of the interests of the temple without having recourse to the special procedure prescribed by section 539 C. P. C.

(*Nellayappa Pillai V. Thangama Nachiar*) 8 M. L. J. 119.

(*Rangasami Naicken V. Varadappa Naicken*) I. L. R. 16 M. 465

(*Srinivasu Iyengar V. Srinivasaswami*) I. L. R. 16 M. 31.

An agreement by the majority of the uralers (trustees) of a Malabar Devaswam (temple) to increase the number of uralers is not binding on a dissentient minority.

(*Narayanan Nambudri V. Sridharan Nambudri*) I. L. R. 5
M. 165.

8. The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple, or other religious establishment was founded, or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple, or other religious establishment.

The appointment of the committee shall be notified in the official Gazette.

In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held under such Rules (not inconsistent with the provisions of this Act) as shall be framed by such Local Government.

A member of a committee can retire from his office of his own will.

(*Tiruvengadathiagar V Rengiagar*) I L R. 6 m. 114.

9. Every member of a committee appointed as above
Tenure of office. shall hold his office for life, unless removed for misconduct or unfitness:

and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

The managing members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government; and whoever shall be then elected under the said rules, shall be member of the committee to fill such vacancy.

If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy, or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order, it shall than be the duty of such remaining members to comply, and if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

When a vacancy occurs among the members of a committee, the remaining members can proceed to elect a new member to fill the vacancy: but they cannot nominate any for it. The District Court has power to supersede a nomination by the committee by a nomination of its own.

(*Ramanujaiyengar V. Anantharamaier* 6 M. L. T. 1.)

The High Court has no jurisdiction to hear an appeal from the order of a District Judge made by him on petition pursuant to section 10, appointing a member to fill a vacancy in a committee. Neither Act XX of 1863, nor the general law gives any right of appeal, which therefore does not exit from such an order.

(*Minakshi Nayadu V. Subramonia Sastri* I. L. R. 11 M. 26).

11. No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager, or superintendent of the mosque, temple, or other religious establishment for the management of which such committee shall have been appointed.

A suit by the members of a temple committee against one claiming to be the hereditary trustee of a Hindu temple for possession of the temple property is not sustainable.

(*Panduranga V. Nagappa*) I.L. R. 12 M. 366.

The manager of a religious institution can sue upon the muchalika obtained by the committee in their name.

(*Kaliyanarama Iyer V. Mustak Shah Sahib*) I.L. R. 19 M. 395.

The correctness of this decision is however doubted by the Madras Law journal. The journal thinks that since the properties of the temple cannot vest in the committee, the muchalika which can only be obtained by a trustee who is the land-lord but which is obtained by a committee cannot entitle the trustee to bring the suit.

No succession certificate is necessary for the collection of a debt due under a Promissory Note executed to the previous manager of an endowment. 1 Cal. W. N. 497.

12. Immediately on the appointment of a committee as above provided, for the superintendence of any such mosque, temple, or religious establishment, and for the management of its affairs, the Board of Revenue, or the Local Agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession, of the said Board or local agents, and belonging to the said religious establishment except as is hereinafter provided for;

On appointment of Committee, Board and Local agents to transfer property.

and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple, or religious establishment, and to all land and other property so transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may, from the date of such transfer, be exercised by such committee to whom such transfer is made.

This section relates only to the rents of property transferred by Government to the committees of religious or charitable institutions. The right of the manager or trustee of such institutions to sue for the recovery of the property of such institutions is not taken away by the Religious Endowment Act.

Sankaramurthi Mudali V. Chithambara Nadan I. L. R. 17 M. 143.

See. I. L. R. 12 M. 366 noted under section 11.

13. It shall be the duty of every trustee manager, and superintendent of a mosque, temple, or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements, in respect of the endowments and expenses of such mosque, temple, or other religious establishment;

and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager, and superintendent of such mosque, temple, or other religious establishment the production of such regular accounts of such receipts

and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof.

Failure on the part of a trustee to submit accounts to the committee which is a breach of one of the most important duties cast upon him by law is sufficient to justify his dismissal.

(*Anantanarayana Iyer V. Kuttalam Pillai*) I. L. R. 22 M 481.

14. Any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager, or superintendent of such mosque, temple, or religious establishment, or the member of any committee appointed under this Act, for any misfeasance, breach of trust, or neglect of duty, committed by such trustee, manager, superintendent, or member of such committee, in respect of the trusts vested in, or confided to, them respectively;

and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent, or member, of a committee, and may decree damages and costs against such trustee, manager, superintendent, or member of a committee, and may also direct the removal of such trustee, manager, superintendent, or member of a committee.

This section indicates the remedy in the case of breach of trust on the part of managers of institutions not subject to the control of the committee.—B, P, 24th June 1879, No. 1829.

Section 14 of the Act although in its terms appears to be more general than the earlier sections, applies in fact only to the same religious endowments to which the rest of the Act applies.

(*Kali churn Giri V Golabi*) 2 C. L. R. 128.

Sections 14 to 18, deal only with such persons filling the office of trustee, manager &c., for acts done by them while holding the office. These sections are no bar to suits brought against ordinary persons as intruders upon the management of the temple.

(*Sabapathi V. Subroya*) I. L. R. 2 M. 58.

The suits contemplated by this Act are suits against duly constituted trustees, managers, superintendent or members of committee while filling such office and in respect of trusts expressly vested in them.

Indian Jurist may 1879 P. 210.

Section 14 is sufficiently general in its terms to empower any person interested in any temple, mosque or religious endowment or in the performance of the trusts relating thereto to sue the trustee &c, for misfeasance and also to empower the Court to order the removal of a trustee &c. The trustees referred to are either hereditary or selected. The tomb of a reputed saint became a place of pilgrimage and an endowment made for its maintenance became a religious endowment and the institution a religious institution within the meaning of Act XX of 1863.

(*Fakurudin Sahib V. Acken Sahib*) I. L. R. 2 M. 197.

The words "trustee, manager or superintendent of a mosque," etc, mentioned in Act XX of 1863, mean the trustee, manager or superintendent of a mosque, etc., to which the provisions of the act are applicable, not the trustee, etc., of any mosque. And such persons are those to whom the provisions of Reg. XIX of 1810 were applicable. The mosques, etc., to which the provisions of that regulation were applicable, were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals, and the mosques, etc, to which the provisions of Act XX of 1863 apply are, not any mosques, etc., but

any mosques for the support of which endowments in land have been made by the Government to private individuals.

(*Jan Ali V Ram Nath Mundal*) I. L. R. 8 Cal. 32.

The provisions of this section apply only to personal misconduct amounting to a breach of trust by a member or trustee &c., in respect of the properties vested in them under section 12 and of which they are to keep regular accounts.

(*Syed Amin Sahib V. Ibram Sahib*) 4 M. H. C. R. 112

The appointment by the committee of a sivite to be a trustee of a vishnavite temple does not amount to an act of misfeasance within the meaning of the section.

(*Gandavathara Iyengar V. Devanayaga Mudali*) I. L. R. 7 M. 222.

The mutwalli of a large mahomedan establishment acting on behalf of the mahomedans of the neighbourhood, to secure the performance of trusts of a deed of appropriation by a mahomedan was held to be a person entitled to sue, being one interested in the preservation of the trust with reference to the words in section 14 and 15 of the Act.

(*Doyal Chund Mullick V. Keramat Ali*) 12 W. R. 382.

Suits.

A suit by a dismissed officer of a religious establishment for restoration to his office is not a suit for misfeasance.

(*Syed Amin Sahib V. Ibram Sahib*) 4 M. H. R. 112.

Section 14 and 15 of Act XX of 1863 do not apply to a case where a trustee of a mahomedan mosque sues for a declaration of his title as against a co-trustee.

(*Athavulla V Gouse*) I. L. R. 11 M. 283.

A suit by the trustees to recover the property of a temple from an ex-trustee who has been properly dismissed from his office by the temple committee is not governed by section 14 of Act XX of 1863. (*Veerasawmy Naidu V. Subbaraya*) I. L. R. 6 M. 54.

A suit for the removal of a trustee lies under section 14 and 15 of this Act. But the reliefs by way of appointing a fresh trustee and vesting the property in him and settling a scheme are not claimable under Act XX of 1863 but only in a suit instituted under section 539, Civil Procedure Code. There can be no objection to claim all the above reliefs in one suit after sanction obtained under section 18 of Act XX of 1863 and section 539 Civil Procedure Code.

(*Narayana Iyer V Kumarasamy Mudaliar*) I. L. R. 23 M. 537.

A suit would lie under section 14 of Act XX of 1863, by some of the persons interested in a temple, to restrain the superintendent from removing a sacred book kept at a temple and which was an object of veneration, to another place, and that he should be directed to retain it as a portion of the furniture of the temple.

(*Dhurrum Singh V. Kishen Singh*) I. L. R. 7 Cal. 767.

If trustees who take charge of gifts made to religious or charitable institution—whether such gifts consist of jewels, cash or land—do not apply the same to the purposes of institution, a suit will lie for an account of their management, for recovering property thus appropriated and for drawing up a scheme for future management.

(*Manohar Ganesh Tambekar V. Lakhmiram Govindram*)

(I. L. R. 12 B. 247)

As for suits under section 539 C P. C.

See (*Chintaman Bajaji Dev V Dhondo Ganes Dev*) I. L. R. 15

B 612.

Act XX of 1863 is applicable to an endowment whereby certain shops had been purchased by subscription and dedicated to the support of a mosque; it is also applicable in respect of a person in possession of the endowed property and professing to act as *mntawalli*, even though he may not have been lawfully appointed.

(*Muhammad Sirajul Haq V. Imam uddin*) I. L. R. 19 All 104.

The worshippers at a public mosque can maintain a suit to restrain the superintendent from using it for purposes other than

those for which they were intended to be used, and from doing acts which are likely to obstruct the worshippers.

(*Abdul Rahman V Yar Muhammad*) I. L. R. 3 All. 636.

A suit to remove a Dharmakarthā, though he is held to have been guilty of misconduct in the discharge of his duties as such may, in the absence of any proved and deliberate dishonesty on the defendant's part, be dismissed on conditions to be complied with by him.

(*Sivasankara V. Vadagiri*) I. L. R. 13 M. 6.

Refusal by a trustee without adequate reason to accept and utilise offerings for celebration of festivals is a breach of duty rendering him liable to a suit under section 14 of the Act.

(*Elayalvar Reddiar V. Namberumal Chettiar*) I. L. R. 23 M.

298.

A trustee who has a hereditary proprietary right vested in him is not liable to be removed for mismanagement, under the rule of Mahomedan Law, unless the donor had specially reserved such a power at the time of endowment.

4 M. H. C. R. 44.

A suit having been instituted under religious endowments act, 1863, section 14, *bona fide* in the interests of a Hindu temple the plaintiffs desired to withdraw the suit with liberty to sue again and an order was made permitting them to do so and directing that the costs be paid from the funds of the institution: It was held that no appeal lay against the order as to costs.

(*Ramakissoor Dassji V. Srirangachariar*) I. L. R. 21 M. 421.

A declaration that property belongs to an institution and that a mortgage over it is not binding on the institution may be asked for and made, when it is ancillary to a claim for the removal of the manager.

(*Mahommed Jafar V. Mahommed Ibrahim*) I. L. R. 24 M. 243.

A *bona fide* belief that the property belonging to an institution of which a person is a manager, is his private property and

the creation of a mortgage over it under such *bonafide* belief is not sufficient to dismiss him from office.

(*Mahomed Jafer V. Mahomed Ibrahim*) I. L. R. 24 M. 243.

This section does not oust the jurisdiction of the ordinary courts except in the cases specified therein.

(*Makalinga Row V. Vencoba Ghosami*) I. L. R. 4 M. 157.

An order under section 14 of Act XX of 1863 should be mandatory and not prohibitory.

(*Dhurrum Sing V. Kissen Sing*) I. L. R. 7 Cal 767.

Remedies against alienation

A plaintiff who seeks to set aside an alienation of lands on the ground that they are dedicated in perpetuity to support the worship of an idol must give strong and clear evidence of the endowment.

(*Konwar Doorganath Roy V. Ram chunder Sen*) I. L. R. 2 Cal 341.

Any worshipper in a religious institution may institute a suit under this section after obtaining sanction under section 18; but a person to sue under section 539 of the c. p. c. should have a direct interest in the trust.

(*Jan Ali V. Ram Nath Mumdul*) I. L. R. 8 Cal. 32.

Section 14 of Act XX of 1863 is generally applicable to all religious endowments and while it in one sense restrains the ordinary courts from dealing with cases against trustees of religious endowments, it gives special facilities for suits in the Principal Civil Court of the District by any of the persons interested in these endowments.

(*Dhurrum Singh V. Kurren Singh*) I. L. R. 7 Cal. 767.

The representative in title of the original settlor of a certain endowment sued in the court of the District Judge in 1893 to have certain alienations made by the trustees originally appointed in

1862 set aside and the property restored to its original uses, and for the appointment of a new trustee or trustees in place of the trustees defendants to the suit. Such a suit falls under section 14 of Act XX of 1863.

(*Sheoratan Kunwari V. Ram Pargash*) I. L. R. 18 All 227.

It is not essential for the application of Act XX of 1863 that the endowment should ever have been taken under the control of the Board of revenue (*Sheoratan Kunwari V. Ram Pargash*) I. L. R. 18 All 227. It was held in this case, that section 539 of the Code of Civil procedure was not applicable.

A person who is in joint possession of a temple and its properties with others who claim to be joint trustees with him must in order to exclude them from the management, sue for sole possession and not for a mere declaration that he is the proper trustee and the others not.

(*Ramasamy Aiyar V. Annasawmy Aiyar*) 8 M. L. J. 121.

Where the trustees for the time being of a hereditary trust belonging to a Hindu Family alienates trust property, the right of the next claimant to the trust to set aside such alienation accrues only on the death of the then incumbent.

(*Velu Pandaram V. Gnana Sambanda Pandara Sannadhi*)

I. L. R. 19 M. 243 and 6 M. L. J. 40.

This decision has been reversed by their Lordships of the Privy Council in (*Gnana Sambandha V. Velu Pandaram*) reported in (I. L. R. 23 M. 271) where it is held that the Law of Inheritance does not permit the creation of Successive Life Estates in an Endowment whose origin was by a gift from the founder and that therefore the plaintiff cannot claim to be entitled otherwise than as heir to and from, and through his father, in whose lifetime the title had been extinguished by lapse of time and adverse possession of the defendant.

Parties.

In a suit brought for the dismissal of a Dharmakarta all the members of the committee should join as parties.

(*Virasami Nayadu V. Arunachella Chetty*) I. L. R. 2 M. 200.

The representatives of a testator who has created a trust for religious and charitable purposes, may institute proceedings to have abuses in the trust rectified.

(*Bropemohun Das V. Harrololl*) I. L. R. 5 B. 700.

All the mutawallis of the Endowment should be made parties to a suit instituted for the recovery of property from a third party; such of the mutawallis as refuse to join as plaintiffs should be made defendants.

(*Bechu Hall V. Olivullah*) I. L. R. 11 Cal. 338.

Section 30 of the Code of Civil Procedure is only permissive and not prohibitive and it deals with procedure only. The granting of leave is not a condition precedent but may take place after the institution of the suit.

(*Srinivasa Chariar V. Raghavachariar*) I. L. R. 23 M. 28.

Administration might be granted to some persons who is in management on behalf of an idol; The idol being the *cestuiquitrust* was a beneficiary within the meaning of Sec 37 of Act V. of 1881.

(*Rajit Singh V. Jagannath Prosud Gupta*) I. L. R. 12 Cal. 375.

A suit relating to property alleged to belong to a temple cannot be brought in the name of the idol of the temple.

Where such a suit was so brought the court in second appeal allowed the plaint to be amended on certain conditions, by substituting the name of the person alleged to be the manager of the temple, but without prejudice to any question which might subsequently be raised as to such person's *locus standi* in the suit.

(*Tharkur Raghunathgi Maharaj V. Shah Lal Chand*)

I L R. 19 All 330.

The Advocate General is not a necessary party to a suit for a declaration by four worshippers at a temple that the election of certain persons as darmakartas was void.

(*Srinivasa Chariar V. Raghava Chariar*) I. L. R. 23 M. 28.

A suit by members representing 2 sabahs of the three which managed a temple without making the other a party is not sustainable.

(*Rajah of Bobbili V. Inuganti China Setaramasami Garu*)

I L R. 23 M. 49.

The uralers are the persons in whom the estate and property of the temple is vested and the 'Karaima Samudayam' is an agent accountable to the uralers and subject to be dismissed by them for misconduct.

(*Kunjneri Nambiyar V. Nilakunden* I. L. R. 2 M. 167)

The Samudayi of a Temple is not competent to bring a suit in its behalf. The proper parties to sue are the Uralers (*Trustees*) (*Rama Varar V. Krishnier Nambudri* I. L. R. 3 M. 270.) (*Patinharipat Krishnan Unni Nambiyar V. Chekur Manakkal Nilakandan Bhattathirpad* I. L. R. 4. M. 141.)

Court Fees Act.

A suit under section 14 is a suit for misfeasance &c., It is a suit of a peculiar nature and it is not one in which it is possible to estimate at a money value the subject matter of the suit and is not otherwise provided for in the Court Fees Act.

A claim to declare that the property in suit is endowed property is one for a declaratory decree, and a Court Fee of Rs. 10 is sufficient.

A suit praying for the appointment of plaintiffs as trustees is a suit in which it is impossible to estimate at a money value the subject matter and a Court fee of Rs. 10 is therefore sufficient under clause 6 Art 17 of the second schedule of the Court Fees Act.

(*Thakuri V Brehma Narain* I. L. R 19. All. 60.)

If in a suit the plaintiffs asked to be appointed mutawallis and if there were emoluments attached to the office of mutawallis and if these emoluments are capable of valuation, the suit is not one in which the subject matter could not be valued.

(*Delross Banoo Begum V Ashgur Ally Khan* 15 B. L. R. 167.)

Similarly it was held in (*Omrao-Mirza V. Jones* I. L. R. 10 Cal. 599) that the right to retain control over trust property could not be estimated at a money value and the suit would fall under clause 6 Art 17 of the second schedule of the Court Fees Act: but the Court also held that as the plaintiff had however chosen to put a valuation on the subject matter of his suit, and as that valuation afforded a basis for the assessment of Court Fees, the Court Fees should be paid with reference to it.

A suit by certain persons to dismiss the defendants from trusteeship and appoint certain others instead and place them in possession is not a suit for possession of property to be valued as such for purposes of Court Fee. Article 17 clause 6 of the second schedule of the Court Fees Act applies to the case.

(*Muhammad Sirajal Haq V. Imam-ud-din* I. L. R. 19 All. 104.)

In (*Sreenivasaiyengar V. Sreenivasasami* I L. R. 16 M. 31) it was held that the plaintiff should pray for possession and not merely to remove the defendants.

The suit for possession which is to be stamped *advalorem* does not seem to include one in which the plaintiff prays for possession being given to the trustees whom the Court may appoint.

See also (*Sonachela V. Manikka*) I. L. R. 8 M 516.

Sec. 42 Act I of 1877.

A suit by trustees for a declaration that an appointment to the office of pattamali was invalid, without a prayer for consequential relief is sustainable, as the pattamali is only a servant of the temple.

(*Janardana Shetti Govindarajan V. Badava Shetti Giri*) I. L. R. 23 M. 385.

A suit by a Mahomedan against a person in possession of certain property for a declaration that the property was wakf, the cause of action being that the defendant in his written statement in a former suit between the same parties denied that the property was wakf was held to be unsustainable under section 42 of Act I of 1877.

(*Wajid Ali Shah V. Dianat-ul-lat-Beg.*) I. L. R. 8 All 31.

See (*Maina V. Brij Mohun*) I. L. R. 12 A. 1587.

(*Abdul Kadar V. Mahomed*) I. L. R. 15 M. 15.

and (*Ganpat Gir Guru Bhola V. Gaupat Gir*) I. L. R. 3 B 230,

Limitation.

In a suit by a person to obtain possession of property belonging to a religious endowment as its trustee or manager, the Privy Council held that section 10 of the Limitation Act was inapplicable (*Balvant Rao Bishvant Chandra Chor V. Purun Mal Chanbe* 10 I. A. 90.)

The same principle was applied in (*Kannan V. Nilakandan* I. L. R. 7 M. 337)

The defendant purchased from one of the two co-trustees of a temple the right to manage the affairs of the temple and enjoy certain land which formed the endowment of the temple, and held possession of the land for more than twelve years: it was held that a suit by the other trustee to recover the land was barred by limitation. (*Kannan V Nilakandan*)

I. L. R. 7 M. 337.

A claim to vindicate the personal right of a trustee to the possession of immoveable property against another person claiming such right in the same character is not governed by section 10 of the *Indian Limitation Act 1877*. (*Karim Shah V Nattan Bivi*)

I. L. R. 7 M. 417.

A suit in respect of a personal claim to manage an endowment does not fall under section 10 of the *Limitation Act*.

(*Giyana Sambandha Pandarasannadhi V Kandasami Tambiran*)

I L R. 10 M. 375;

but a suit to set aside the appointment of a person as the head of a mutt and to see that a competent man is appointed is not barred (*Giyana Sambandha Pandara Sannadhi V Kandasami Thambiran*) I. L. R. 10 M. 375.

A suit against trustees for charging certain property with the trusts declared by the author and for an account is a suit to follow property and is not barred by any length of time. (*Hurro Coomaree Dossee V Tarini Ohurn Bysack*) I L R 8 Cal 766.

Section 10 applies to trusts expressly created for specific purposes and to properties vested in a trustee upon such trust; it does not apply to trusts implied or to be inferred by law (*Kherodemoney Dossee V Doorgamoney Dossee*) 1 L R 4 Cal. 456 and *Greender Chunder Ghosh V Mackintosh*) 1 L R 4 Cal 897.

Section 10 is not applicable to a suit where some of the grantees of lands for the support of a mosque sued to set aside a compromise entered into between other of the grantees and a Superintendent who was sought to be removed. (*Mahammad Baksh V Muhammad Ali*) 1 L R 5 All 294

Suit against the Dharmakarta of a Hindu temple, who had been removed from office, to recover a certain sum alleged to have been misappropriated by him while in office is not barred by any length of time as he is a person in whom the temple funds had become vested in trust for a specific purpose within the meaning of S. 10 of the limitation act, 1877.

(*Sethu V Subramanya*) 1 L. R. 11 M. 274.

The trustee of a Malabar devasom, is entitled to sue to recover for the devasom possession of land which had been demised on Kanom by his predecessor on the ground that the land was improperly alienated by his predecessor and that therefore the demise, is invalid as against the devasom; Such a suit is not barred by limitation (*Vedapuratti V Vallabha*) 1 L R 13 M 402.

The servants of a Hindu temple who occupy temple lands could not by a wish change the nature of possession and claim adversely to the manager of the temple, as both hold the land for the same deity. (*Mulgi Bhulabai V. Manohar Ganesh*)

1 L. R. 12 B. 322.

A person who wrongfully holds as trustee and pretends to act as trustee cannot be entitled to reprobate the right which he asserts and to contend that he holds adversely to his *cestui qui trust*. The possession of such a person cannot be treated as adverse to the endowment.

(*Sheo Shankar Gir V. Ram Shewak Chowdhri*)

1 L. R. 24 Cal 77.

Trustees cannot acquire trust property by possession adverse to the trust.

(*Bhitto Kunvar V, Kesho Pershad Misser*)

1 Cal. W. N. 265.

The hereditary right of a person is a personal right accruing on the death of his predecessor and therefore for a suit to set aside certain alienation made by his predecessor in title, time begins to run only from the date of the death of the predecessor.

Velu Pandaram V, Gnanasambanda Pandara Sannadhi.

I. L. R. 19 M. 243.

This decision has been reversed in (*Gnanasambanda V. Velu*)

I. L. R. 23 M. 271.

The plaintiffs and defendants together with one Subbaraya Pai were trustees of a temple having been appointed by the committee under Act XX of 1863. Subbaraya Pai died in 1884. He was in exclusive management for some years before his death. Subsequently the defendants were in sole management until 1891, when the plaintiffs brought the present suit charging that the defendants had excluded them from the right of management and claiming that they should make good sums lost to the institution by reason of breaches of trust alleged to have been committed by them. Some of the breaches of trust took place before 1884. Of the others which took place subsequently some consisted in improper dealings with the temple property to the detriment of the temple and to the advantage of defendant's relatives. The plaintiff also asked for an injunction to restrain the defendants from excluding them from management ?

Held (1) that, in the absence of evidence of an absolute denial by the defendants of the plaintiff's right to act as trustees, the suit for an injunction was not barred by limitation. (2) that the suit could not be regarded as a suit by the beneficiaries and was not within the operation of section 10 of the Limitation Act. (3) that the suit was not maintainable in respect of breaches of trust committed in the life time of the deceased manager, as being to that extent barred by limitation, and also for the reason that such breaches were not more imputable

to the defendants than to the plaintiffs. (4) that even if it had been proved that the community interested in the temple had sanctioned the acts of the defendants now complained of, that circumstance would not suffice to excuse the defendants. (5) that the defendants were liable to make good any loss occasioned by any breach of trust committed within six years of the date when the suit was instituted even in the absence of fraud, and that in estimating such loss prospective loss should be assessed (*Renga Pai V. Baba*) I. L. R, 20 M, 398.

A suit by the present holder of the office of trustee of a temple for the recovery of land which was not sued for by the predecessor in title who held the office for more than 12 years is held to be barred, the adverse possession held during the previous office holder's time barring his successor.

(*Chidambara Chetty V. Minamma*) I L R 23 M, 439,

15. The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple, or religious establishment, or of partaking in the benefit of any distributing of alms shall be deemed to be a person interested within the meaning of the last preceding section.

In the case of a public endowment transferred to trustees under this Act, any person interested in the religious establishment in its worship or in its trusts has a right of suit after leave obtained under this Act, against such trustees for misfeasance &c. (*Kuneez Fatima V. Saheba Jam*) 8 W, R, 133

Worshippers or devotees of an idol are entitled to bring a suit,

complaining of a breach of trust (*Radhabai V Chimnaji*)

I L R 3 B 27.

A suit by a Muhammadan who is not interested in a property sought to be declared as wakf, otherwise than as being a Muhammadan is not sustainable. (*Wajid Ali Shah V, Dianet-ul-lah-Big*)

I L R 8 All 31.

Section 15 is not applicable where the applicant relies on the will of a former mohunt and a deed of approval by some of the members of the caste, to enable him to file a suit to have it declared that he is the proper person entitled to be the mohunt and that the existing mohunt should be removed.

(*Kishore Bon Mohunt V, Kalee Churn Giri* 22 W, R, 364,)

Section 539 C. P. C.

Under Section 539 as originally enacted the words were "having a direct interest in the trust," and the word "direct" has been taken out by Act VII of 1889. The inference is that the Legislature intended to allow persons having the same sort of interest that is sufficient under section 14 of act XX of 1863 to maintain a suit under section 539.

Section 539 C. P. C. confers a right of suit against trustees which did not previously exist and it is not applicable to a suit by persons interested in a religious institution to eject a trespasser from the office of trustee, (2 M L J 139,)

A suit for a mere declaration that the defendant is not the duly appointed head of a mutt will not lie—(*Srinivasa V Srinivasami*) 1 L R 16 M 31.

A suit for the dismissal of a trustee and for the recovery of trust properties from the hands of a third party to whom the same has been improperly alienated is within the scope of section 539 of the Civil Procedure Code.

(*Sajedur Rajah Chowdhuri V Gour Mohun Das Baishnar*) 1 L R 24 Cal 418.

A suit to remove a trustee to a charitable trust does not lie under section 539.

(*Rangasami V Varadappa*) 1 L R 17 M 462,

16. vn any suit or proceeding instituted under this Act it shall be lawful for the court before which such suit or proceeding is pending to order any matter in difference in such to be referred for decision to one or more arbitrators ;

Whenever any such order shall be made, the provisions of Chapter VI of the Code of Civil Procedure shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under section 312 of the said code.

The order of a Judge to refer the matter in difference for decision to one or more arbitrators, without the assent of the persons to be bound, is valid in law.

(*Immedy Kanuga Ramayya V. Ramaswami*) 7 M. H. C. R. 173.

Where a suit for dismissal of the members of a Devasthanam Committee and damages was referred under Act XX of 1863, section 16, to arbitrators who passed an award dismissing them as prayed and decreeing a portion of [the] damages claimed with interest, it was held that the court had power to refer the matter to the arbitrators and award damages [with interest, provided the amount, inclusive of interest, did not exceed the amount claimed in the plaint.

(*Perumal Naick, V. Saminatha Pillai*) I. L. R. 19 M. 498.

17: Nothing in the last preceding section shall prevent the parties from applying to Court, or the Court from making the order of reference, under the said section 312 of the said Code of Civil Procedure.

18. No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.

Application for leave to institute suit.

The Court, on the perusal of the application shall determine whether there are sufficient *prima facie* grounds for the institution of a suit, and if in the judgment of the Court, there are such grounds, leave shall be given for its institution.

If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just, to be paid out of the estate.

Section 18 applies only to such religious establishment as were under the control or superintendence of the Board of Revenue or of local agents under Regulation XIX of 1810, and were transferred to trustees or managers under section 4 of the Act. Hence if the wakfnama executed by a Mahomedan lady did not constitute a public religious establishment within the meaning of Act XX of 1863, the judge has no authority to give under section 18 leave to sue.

(*Delros Banoo Begum V. Ashgar Ally Khan*) 15 B. L. 167—23 W. R. 453.

This decision was affirmed by the Privy Council in

(*Ashgar Ali V. Delroos Banoo Begum*) I. L. R. 3 Cal. 324.

Act XX of 1863, while it empowers persons to sue whose right to sue independently of the Act, may be doubtful, does not deprive persons claiming to be beneficiaries under a deed of endowment of the right to sue, which they have independently of the Act, nor does it impose on them the necessity of obtaining the sanction to institute the suit required by section 18 of the Act.

(*Kulab Hossein V. Mehrum Beebee*) (4 N. W. 155).

Preliminary leave of the Court is necessary only when the trustees, managers or committees are charged with misfeasance, malversation of the temple property or neglect of duty.

(*Agri Sharma Embrandri V. Vishnu Embrandri*) 3 M. H. C. R. 198,

No leave of the Court is necessary for a suit by the committee against their manager or superintendent for damages for misappropriation.

(*Puddolabh Roy V. Ramgopal Chatterjee*) I. L. 19 Cal. 133.

An appropriator, who sues on the ground that the trust created, so far as it related to the appointment of a trustee had never been acted upon and that his original rights remain is at liberty to bring a suit without leave under section 18.

(*Hidaitoonissa V. Afzul Hossein*) 2 N. W. 20.

An order refusing permission to sue is neither appealable, nor subject to revision under 622 of the Code of Civil Procedure. (*In re Venkateswara*) I. L. R. 10 M. 98.

A sanction given at the instance of a petitioner under section 18, for leave to institute a suit without first giving notice to the counter-petitioners and hearing their objections if any, is a legal sanction. What is intended by the section to be done by the judge before granting the sanction is only a "perusal of the application"

(*Venkatapayya V. Venkatapathi*) 7 M. L. J. 84.

An order of a District Court refusing leave to institute a suit and deciding that a temple was within section 3 of the Act is not conclusive upon the questions of title between the parties.

(*Venkatesa Naicker V. Srinivasachariar*) 4 M. H. C. R. 410.

There is no appeal to the High Court in a case where the District Judge reverses an order of his predecessor under this section and passes a different order.

(*Kaviraja Sundaramurtia Pillai V. Nalla Naickan Pillai*)

3 M. H. C. R. 93.

The order of the judge under section 18 against which an appeal is preferred is not a decree in a suit or an order passed in execution of a decree which is appealable under the Civil Procedure Code—Act XX of 1863 is silent as to any appeal

(*Delroos Banoo Begum V. Hajee Abdul Rahman*) 21 W. R. 368.

An order under section 373 Civil Procedure Code permitting the withdrawal is not appealable.

(*Kalia Sing V. Vhekhrij Sing*) I. L. R. 6 All. 211, (*Jogodindro Nath V. Saral Sundari Debi*) I. L. R. 18 Cal. 322.

An order relating to costs made under this section is not a decree within the definition of that word in section 2 Civil Procedure Code, nor is it one of those enumerated in section 588 Civil Procedure Code. It is therefore not appealable.

(*Ramkissoor Dasji V. Sriranya Charloo*) I. L. R. 21 M. 422.

There is no appeal from an order passed under section 18 of the Act.

(*Hajee Kalub Hossein V. Ali Hossein and others*)

4 N. W. P. 3.

No appeal lies from an order passed under section 18 of Act XX of 1863 granting the plaintiffs leave to institute the suit. (*Protapchandra Misser V. Brojo Nath Misser.*) I. L. R. 19 Cal. 275.

If sanction is given to sue for the removal of the manager and for damages, a suit for the removal alone without claiming damages will be rejected. (*Srinivasa V. Venkata*) I. L. R. 11. M. 148.

Where sanction is granted for filing a suit for the removal of the present mohunt and for the appointment of the petitioner, such a sanction has been held to be null and void as the object of such an application is virtually to have it declared that the petitioner is entitled to the gaddee and to the possession of the lands connected with the endowment.

(*Kishore Bon Mohunt V. Kalee Churn Giree,*) 22 W. R. 364.

19. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the court may order the trustee, manager, or superintendent, or any member of a committee, as the case may be to file in court the accounts of the trust, or such part thereof, as to the court may seem necessary.

20. No suit or proceeding before any Civil Court under the preceding sections, shall in any way affect or

interfere with any proceeding in a Criminal Court for criminal breach of trust.

The ordinary criminal law is not excluded by this section.

I. L. R. 1 M. 55.

The deity must be regarded as the owner of the temple property and the trustee appointed by the committee is the agent of the deity subject to the committee's control. Therefore the trustee who misappropriates the temple jewels is guilty of Criminal Breach of Trust and not of Theft.

(*Muthuswami Pillai alias Kunju Pillai V. Queen Empress.*)

6 M. L. J. 14.

21. In any case in which any land or other property

Case in which endowments are partly for religious and partly for secular purposes.

has been granted for the support of an establishment partly of a religious and partly of a secular character, or in which

the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses.

the Board of Revenue, before transferring to any trustee, manager, or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager, or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee manager, or superintendent, or of the committee, and made payable to the said Board or to the local agents for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

22. Except as provided in this Act, it shall not be lawful for any Government in India, or for any officer of any Government in his official character to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple, or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple, or other establishment, or

to nominate or appoint any trustee, manager, or superintendent thereof, or

to be in any way concerned therewith.
