

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Kashi
Bashi Ramling Swamee v. Chitumbernath
Koomar Swamee, from the High Court of
Judicature at Agra, N. W. P., Bengal; de-
livered on Thursday, the 12th June 1873.*

Present :

SIR JAMES W. COLVILLE,
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS Appeal has come before their Lordships *ex parte*. This is a disadvantage in every case, and it might be peculiarly so in one like the present, in which questions are raised, the determination whereof depends not so much upon the general law of property as upon the rules—whether defined by writing, or to be inferred from evidence of long usage—that regulate a particular religious community. Had their Lordships thought there was any real difficulty in the case, they would have taken time to consider their judgment and would have gone carefully over the evidence contained in this voluminous record before they decided in favour of the Appellant; but for the reasons which I am about to state they are clearly of opinion that he has failed to make a sufficient case for disturbing the decree against which he has brought this Appeal.

The Appellant being the mohunt of the muth at Tirpantal sued the mohunt of the muth at Benares in the Civil Court of that Zillah, his

claim, as stated in the plaint, being the right to manage and superintend as proprietor the muth and chuttur affairs at Benares, and also to manage and superintend the temple of Sri Kedareshur, to recover certain movable and immovable property belonging to the said muth, chuttur, and temple, and to have an account of the receipts and disbursements relative to the said temple and chuttur, and the landed property claimed from the 15th of October 1864 up to the date of suit, together with subsequent profits and proceeds; such relief being claimed by virtue of his proprietary right as mohunt and guddee nasheen of the "head quarters muth of Tirpuntal, Zillah "Tanjore, in the Madras Presidency, under "whose jurisdiction and power the chuttur in- "stitution at Benares, &c. had continued from "time immemorial, by removal of the possession "and superintendence of the Defendant who had "been acting as agent."

The plaint further stated that the particular cause of action arose on the disobedience of the Defendant, on the mismanagement of the affairs entrusted to him, on the non-submission of the accounts contrary to a practice of old standing, on his acting unlawfully and dishonestly and inconsistently with the dignity of the muth, and on the assertion of his right to possession as proprietor of the chuttur, &c. at Benares, as appeared from a petition which he had filed in the criminal proceedings.

The written statement of the Plaintiff somewhat amplified the case made by the plaint, and stated that "by the aid of the Rajahs of "the Deccan the custom of establishment of "chuttur or charitable institutions by the Tir- "puntal Kashi Muth in various parts of India "has existed for a very long time. The pro- "prietor or the installed person always remains "at the Kashi Muth in Tirpuntal, which is the

“ head quarters. His duty has been to carry on
 “ the business of all other places by appointing
 “ agents to send money for necessary expenses
 “ to every one of the chutturs, and to test and
 “ keep a watch over the account of every
 “ kind of income (including the money sent by
 “ himself) derivable from the movable and im-
 “ movable properties appertaining to the muth,
 “ chuttur, temple, &c. in each of those places, as
 “ well as other matters appertaining thereto.
 “ For Benares also, where the foundation of a
 “ chuttur was first laid, agents have successively
 “ been appointed for a long time; and it is now
 “ unnecessary to mention all the agents or
 “ managers nominated during the period of
 “ several centuries back.” The Plaintiff then
 states certain changes in what he calls the agency,
 and what on the other side is called the succes-
 sion of the mohunts at the establishment at
 Benares, and then proceeds to state the non-
 render of the accounts, and the acts of failure of
 duty by the Defendant as his agent.

The written statement of the Defendant after
 stating that the Plaintiff was wrong in claiming
 as his property the immovable property and the
 estate situated in the chuttur (sacred place),
 and the endowed property, contains the following
 passage:—“ Those properties were acquired by
 “ and belong to the mohunts Guddee Nusheens
 “ at Benares, the ancestors of the Defendant,
 “ and the Defendant himself. He holds deeds
 “ and documents of courts in proof of this.”
 “ The Defendant is not an agent or manager, he
 “ is the real proprietor and guddee nusheen, and
 “ in possession and occupation by right of suc-
 “ cession to his ancestors.” It then states certain
 facts as to the original foundation of these re-
 ligious establishments, which seem to be admitted
 by both parties, and which will be considered
 thereafter.

Upon the case thus raised between the parties

the Judge at Benares framed three issues. The first issue, which was as to the question of limitation, it will be unnecessary to consider, since it is now out of the case; the second issue was, "Who is the proprietor of the property situate in Benares?" and the third was, "Whether the Defendant was the agent of the Plaintiff or not?" The judge of first instance, who tried the case, decided the two last issues in favour of the Plaintiff and gave him a decree for all that he claimed. The Defendant then appealed to the High Court, and that court modified the decree of the judge below. Their decree found that the Plaintiff was entitled to the possession of certain chutturms and gardens, which, though situate at Benares, had, as the Defendant had admitted, been built or purchased out of funds remitted from Madras; and accordingly decreed the possession of those properties to him. It also found him entitled to have an account of the expenditure of the sum of Rs. 45,777, which was admitted to have been remitted from Tirpuntal to the Defendant since October 1864, and "to have an account of all rents and profits received from the chutturs and garden land aforesaid from that date;" but it held that he had failed to make out that he was entitled to possession of the muth and temple at Benares, or of any property other than that of which possession was thereby decreed to him.

Against that decree the present Appeal is brought, and, there being no cross appeal, the question is reduced to this—whether the High Court was right in limiting the relief given to the Plaintiff to that just stated, or whether they ought to have gone on further and to have decreed that he was entitled to the possession of the whole of the property claimed, and, as an incident or a step to that relief, to the removal of the Defendant from the office of mohunt at Benares.

It is admitted by both parties that the original establishment of this community was at Benares, that it took place some 300 years ago, that 150 years afterwards the establishment at Tirpuntal was set up, and that from that time the two were in communication together; but the dispute between them is whether the mohunt of Benares was in any sense the agent of the mohunt of Tirpuntal, or in any and what degree inferior to him and subject to his orders. Of the constitution of the original foundation or of the terms upon which it was set up at Benares, there is really no evidence whatever. Nor is it shown by any direct evidence what alteration was introduced into the constitution of the community at the time at which the migration from Benares of part of the community to Tirpuntal in Tanjore took place, or what was then settled as to the relation of the two mohunts. What proof there may be on these points, is left to be collected from the voluminous correspondence which has been filed in the cause, and from the acts of the parties on the occasion of the different changes in the office of mohunt at the one place or the other.

The undisputed facts that the original foundation was at Benares, that Benares is the holy place, and that the object of the foundation was to afford to persons, either resident in the south of India or making pilgrimage to Benares, facilities for carrying on their worship and performing their religious duties there, seem to their Lordships to raise a presumption that the establishment at Tirpuntal was subordinate to that at Benares rather than that the ancient foundation became subordinate to that at Tirpuntal. Such a presumption may no doubt be rebutted by evidence of the facts, but the question is whether there is in this case sufficient evidence to rebut it. It may be here observed that the persons who

form this community appear to be more or less connected with establishments in places other than Benares and Tirpantal, and particularly with one in the south of India, which was the place of residence of the person termed the gooroo, the history of whose interference on the occasion of one of the elections has some bearing on the direct questions raised in this cause.

It is further to be observed that even if the story of the Plaintiff as to the first establishment of the muth at Tirpantal were correct, it would by no means follow, in the absence of evidence to that effect, that the mohunt who migrated from Benares to Tirpantal had power to alter the original constitution of the community or to say that Tirpantal should thenceforward be its head quarters, and that the person in possession of the foundation at Benares should be the inferior, or mere agent of the mohunt at Tirpantal. The change, and the authority by which it was effected, should have been distinctly proved. But of what facts is proof really to be gathered from the correspondence?

The correspondence set out in the record begins in 1843. At that time one Soke Ling was the mohunt at Tirpantal, and the earliest letters relate to the appointment of a mohunt at Benares in the room of one Ayarub, deceased. The person appointed was Saminada; the Respondent being then appointed to the second rank in the muth,—and on the death of Saminada in 1846 he became mohunt of the Benares muth. It certainly appears that Soke Ling, being the elder man, and possibly the person whose disciple the Respondent had been, was regarded with a high degree of reverence and respect by the Respondent, and that the letters which were addressed by him to Soke Ling were rather the letters of an inferior to a superior than the letters of one upon equal

terms with his correspondent. But Soke Ling fell ill, and wished for the appointment of a successor; and it results, in their Lordships' opinion, from the correspondence, that the successor, whose name was Gunput, was appointed by Soke Ling with the concurrence of the Respondent, the then mohunt at Benares, and that that concurrence was treated as essential to the validity of the appointment. And when Soke Ling died and Gunput became the mohunt actually in possession of Tirpantal the character of the correspondence is very much changed. The character it then assumes is that of a correspondence between a mohunt at Tirpantal who felt himself to be in some degree the inferior of the mohunt at Benares, looking up to him and seeking instructions from him much as the Respondent had previously sought instructions from Soke Ling. Again, Gunput's reign was a short one, and when he died the present Appellant, then a young man of about 21, was appointed; and it is perfectly clear from all that preceded and accompanied that appointment that the Respondent, as the mohunt at Benares, was looked to as the person whose concurrence was necessary, and whose advice in all the difficulties attending that appointment was sought, and that for several years after Ramling got into possession he looked to the mohunt of Benares rather as his superior than (as is represented by the plaint) as his agent and a person simply subordinate to him. There were great difficulties at the time of that election, because a third party, the gooroo, came in and set up a claim to put in his candidate as the mohunt of Tirpantal. There was an appeal to the civil authorities, and not only did Ramling, the Appellant, bring his claim before them, but at his instance and on his invocation the Respondent came forward and made a representation

in support of that claim. And what he then stated in his letter to the Collector and Magistrate of Koombhone seems to their Lordships to embody that which is fairly to be inferred from the correspondence as the true condition of things, and the true account of the constitution and relation of the two muths and their respective mohunts. He says in that letter: "I respectfully
 " beg to state that since a long series of years
 " there have been two muths, one at Benares and
 " the other at Tirpuntal, Zillah Koombhkone,
 " in the Madras Presidency, to which are attached
 " landed property for their support and two
 " mohunts to manage them respectively. From
 " the income of the landed estates of and the
 " donations of several Rajahs of Deccan to each
 " muth its expenditure is defrayed, establish-
 " ment is maintained, and the revenue of Go-
 " vernment paid by its respective mohunts. But
 " it has been the usual custom that, when the
 " mohunt of either muth is to nominate a deputy
 " or successor to himself, he is obliged to secure
 " the consent of that of the other, as will be seen
 " in the case of the late Sookh Linga Samee,
 " who, while confined to his sick bed, invited
 " me over to Tirpuntal to make arrangements
 " about the muth thereat, and choose and nomi-
 " nate a successor to him." And then after
 stating what was done on the occasion of the
 appointment of Gunput, he goes on to say with
 respect to the appointment of the Appellant,
 " Gunput Tumbran, having been ill for the last
 " two months, requested my permission to enter-
 " tain Ram Linga Tumbran as his assistant
 " during his lifetime, and his successor after
 " him. On my intimating through a letter my
 " compliance with his request, Ram Linga was
 " chosen his assistant and successor since the
 " 5th November 1853, on condition that he
 " (Ramlinga) should serve under my direction.

“ Further, Gunput 'lumbran begged me hard to
 “ grant a formal deed of appointment to his
 “ assistant and successor “ (Ramlinga Swamee),
 “ which I have sent him in English on stamped
 “ paper, dated 28th November 1853, and attested
 “ by credible witnesses.” That deed is not pro-
 duced, but its existence is fully admitted by the
 Plaintiff himself, in his letter of the 16th of
 December 1853, to the Respondent, in which he
 confirms the Respondent's statement of the re-
 lation between them, and gives an account of
 the proceedings before the collector. That letter
 contains the following passage: “ I replied also
 “ that the Swamee in Kashi, having made me the
 “ ‘ Malik ’ of this place, had sent a letter to me,
 “ and the collector desired me to produce that
 “ letter. I produced it, and the collector having
 “ inspected it, caused the letter inside the enve-
 “ lope to be fully read out to him. He after-
 “ wards inquired where was the deed of permis-
 “ sion in my favour, which appeared from the
 “ purport of your letter to have been received by
 “ me from Kashi, and I replied that it was with
 “ my man, and the above-named tehsildar, having
 “ snatched it from him, gave it to his man to
 “ take it to Alganath Swamee.”

Whether this deed of appointment could have
 been produced in this suit, or why, if it could
 have been produced, it has not been produced by
 the Appellant in whose custody it would naturally
 be, has not been shown. But in their Lordships'
 judgment the passages of the correspondence
 which have been cited, and indeed its whole tone,
 are altogether inconsistent with the Appellant's
 contention that the mohunt at Benares was
 merely the agent of the mohunt at Tirpuntal,
 or that the latter was the real proprietor of the
 foundation at Benares, and therefore negative the
 title set up in his pleadings.

That there may have been, and that there
 ought to have been, accounts between these esta-

blishments their Lordships see no reason to doubt. The nature of their transactions appear to be of this kind. The muth at Tirpuntal fed, as it were, the establishment at Benares, the object of which was to afford facilities to pilgrims and others who wished to pay their devotions at Benares for so doing. The result of the system was that the establishment at Tirpuntal collected the alms of the faithful in the south of India, and remitted from time to time considerable sums to Benares. Many of these sums had a special destination. They were directed to be applied to particular purposes, such as throwing the ashes of Rajahs who had died in the south of India into the Ganges at Benares, or the performance of special services to the idols there, or to the establishment of special charities. This state of things produced complicated exchange transactions between the two establishments; and the correspondence shows that there was very often a considerable deficiency of funds in each of them; each at times having to borrow money as it best could. There was, therefore, necessarily an account current between them; the one having to keep the other instructed as to the funds in hand, the funds required, the liabilities incurred, and the like particulars.

It has, however, been argued that from certain items in the accounts produced, which relate to the rents of property at Benares, and to the expenditure of moneys upon the pushta and other things belonging to the temple at Benares, it is to be inferred that the whole of the property at Benares was held by the Mohunt at that place subject to the orders and as a mere agent for the Mohunt at Tirpuntal.

Their Lordships do not think that this is a necessary or fair inference from those items of account. They may, in their Lordships opinions, be accounted for by supposing that they were

inserted in order to show what was the state of funds at that time at Benares, and what the available means of the mohunt at that place. Their Lordships cannot infer from them, against all the evidence afforded by the correspondence, that the relation of the two mohunts was that of principal and agent.

Now, this being their Lordships' view, it seems to them that the Plaintiff, who had to make out his case, has wholly failed to establish the affirmative of either of the two issues settled, and to prove either that he was the proprietor of the property claimed at Benares, or that the Defendant was his mere agent; and therefore, if they had been trying the case in the first instance they would have had serious doubts whether the suit, being misconceived and founded on an alleged title which the evidence failed to support, ought not to have been wholly dismissed. It was proved, however, that in the year 1865, the Appellant being dissatisfied at not receiving regular accounts, went to Benares, and that the Respondent, who appears to have then become somewhat old and ill, and at one time not unwilling to retire altogether from office, executed an ikramamah, by which he agreed to render accounts, and the High Court, acting upon that has decreed that there should be an account of the monies remitted from Benares since that date. Also the Respondent appears to have made in the course of the trial an admission that certain of the chutturs claimed had been erected out of moneys remitted from Tirpuntal, and the High Court considered that this was sufficient to give the mohunt at Tirpuntal a right to the possession of those chutturs.

It is not necessary for their Lordships, as there is no cross appeal, to consider whether a title to disturb the possession of those chutturs was properly established, a question on which they

intimate no opinion; but they have come to a clear conclusion that the Plaintiff has wholly failed to make out any title to the general property of the muth at Benares, and that, therefore, the High Court was at all events right in dismissing the rest of his suit and in limiting the relief given to that which is included in its decree.

Mr. Leith also argued that the High Court ought on its own principles to have gone further, and directed that there should be a change of possession of any other lands or houses which might be found to have been purchased by means of the money of which an account was directed. Their Lordships are disposed to think that all the relief to which the Appellant may be entitled, consistently with the decree or as consequential thereon, may be had in working out the account. But in any case, taking the view which they have already expressed of the rights of the Appellant, and considering the danger of interfering with the management of the affairs of this religious community upon such imperfect information of its nature and constitution as is given by the record, they are not disposed to recommend any additions to the decree.

Under these circumstances their Lordships think it will be their duty to advise Her Majesty simply to affirm the decree of the High Court, and to dismiss this Appeal.