Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Idroos Lebbe Maricar Abdul Azeez v. *Mohamed Ismail Abdul Rahiman Mudliyar, from the Supreme Court of the Island of Ceylon; delivered the 27th July* 1911.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD ATKINSON.
LORD SHAW.

[DELIVERED BY LORD SHAW.]

This is an appeal by the Plaintiff against a Judgment of the Supreme Court of the Island of Ceylon, dated the 26th November 1909, reversing a Judgment of the District Court of Colombo in the Plaintiff's favour, dated the 9th December 1908.

The action is a possessory one under Ordinance No. 22 of the year 1871. It was brought by the Plaintiff, who held the position, by appointment of the congregation, of trustee of the Maradana Mosque in Colombo, he having been for more than the requisite year and day in possession of the Mosque, and having been forcibly ejected by the Respondent and three other Defendants. It is admitted that had the Plaintiff been owner of the Mosque the possessory action would have been suitable and convenient; but it is maintained that, as he did not hold the property except as trustee or manager, the possessory remedy was incompetent. This is the only question in the case.

On the 19th June 1903, the Plaintiff was appointed trustee of the Mosque for a period of five years. On the 21st June 1908, it is alleged by the Plaintiff that the Defendants "unlawfully entered into and upon the said Mosque and premises, and ousted the Plaintiff therefrom, and took forcible possession thereof, and unlawfully and forcibly deprived the Plaintiff of the management, control, and possession thereof." This is denied by the Defendants.

The learned District Judge, Mr. Schneider, holds that the ouster has been amply proved, and that "as to the events of the 21st June 1908 "there is no room for any doubt that the two "Defendants who have given evidence and the "two witnesses called for the first Defendant "have all been speaking what is not true."

The Plaintiff denies that he had surrendered his office as trustee, and asserts that he was re-appointed before the expiration of his term. The Defendants, on the other hand (the Defendant above-named being the only one who is Respondent in this Appeal), alleged that on the 5th June 1908 the Defendant named was at a meeting of the United Assembly of the Congregation appointed as a trustee to succeed the Appellant on the expiry of his term as such, namely, on the 19th June. The regularity of this meeting is denied by the Appellant. Two days before the meeting, viz., on the 3rd of June, the Appellant had publicly called attention, by the letter printed in the Appendix, to the responsibilities attending the "grave irregularity" which, as he alleged, was "involved in sum-"moning such a meeting without due authority," &c. Out of this conflict two facts are clear, namely, first, that each of the parties, the Appellant and the compearing Respondent, maintains that he is lawfully in possession as trustee or manager for the congregation; and,

secondly, that instead of the question of who is in the right being settled by agreement or by law, and the Appellant having been possessor of the premises in fact, the Defendants ejected him from such possession by force. The learned District Judge was of opinion that this case was one for which the possessory remedy of interdict was suitable and competent. In their Lordships' opinion, this conclusion was right.

In the Judgments of the learned Judges of the Supreme Court there is considerable citation of authority from the ordinary text-books of the Roman-Dutch law, and also from various decisions pronounced in the Courts of Ceylon. Most of the authorities - not only the text-books, but also the decisions -appear to have been cited in the case of *Changarapilla* v. *Chelliah*, decided on the 13th February 1902, in the Supreme Court of Ceylon. In their Lordships' view, that decision was sound in principle and is applicable to the circumstances of the present case. It was "an action brought by a person who is described "as the manager of the Hindu temple, com- "plaining that he has been forcibly dispossessed "of the property and asking to be restored to "possession, in a possessory suit . . . . "It was urged that whatever his duties and "rights were, and whatever his powers were, "he did not claim to be the owner of the "property *ut dominus*, and that, therefore, he "could not maintain this action." Having thus described the suit, Bonser, C.J., adds:—"It "seems to me that if the Plaintiff, who is called "the manager of the temple, has the control "of the fabric of the temple and of the property "belonging to it, he has such possession as "would entitle him to maintain an action, even "though he makes no pretence of claiming the "beneficial interest of the temple or its property, "but is only a trustee for the congregation who

" worship there." Having considered the rules and regulations for the management of the mosque, containing a statement of the rights and duties of the trustee, their Lordships think that the present case is entirely within the principle of that decision.

This case was followed by the Ceylon Courts in *Sivapragasam* v. *Ayar* (2 Bal. 49, 1905), and Changarapilla's case was in express terms founded upon and followed. Now, these cases were decided—one in 1902 and the other in 1906. And the alleged conflict of authority is a conflict between previous cases in the Ceylon courts, a conflict which in their Lordships' opinion, arising as it did upon a point of practice, might have been well held to be conclusively settled. They entertain some surprise that these later cases of Changarapilla and Sivapragasam were not accepted as settling any uncertainty of authority which had previously existed and as definitely binding on this point of procedure.

It is accordingly unnecessary to deal with the institutional authorities quoted, but, in their Lordships' opinion, these are not in conflict with the Ceylon practice as now fixed, and they were rightly interpreted in Changarapilla's case. The passage from Voet founded upon (43, 16, 3) indicates that he was alive to the consideration that to give to the expression *ut dominus* as applied to possession too narrow a construction might prove inequitable and unworkable, and it shews clearly that the remedy was not denied to a *colonus* or a procurator if the *dominus* was absent. And other cases, such as property which is in the possession of a wife, and which she had received by a donation *inter virum et uxorem*, (although such a legal title was null), are treated as suitable for protection by possessory remedies. The question of possession by agency was but slightly developed, and accordingly slightly dealt

with at the time, and in the works of some of these learned authors. It may be added that an instructive passage in the notable chapter on "Possession," which occurs in the exposition of Roman law by that very learned author Mr. Hunter, does not appear to have been cited in the Courts below. It seems almost precisely, however, to touch the present case (page 363):—

"If A enters on land possessed by B, and neither A nor "B asserts that the land belongs to him by any investitive "fact, there is nothing unreasonable in saying that B should "be protected in his possession against A. To use the "expression of Paul, as between A and B, B has the better "right to the possession. (D. 43, 17, 2.) In a controversy "between them, it is immaterial that B does not claim to "have any right of property founded on any investitive fact, "for A is in the same position."

Their Lordships will humbly advise His Majesty that this Appeal should be allowed, and the Decree of the Supreme Court set aside; and that of the District Court restored, with costs to the Appellant here and in the Courts below.

In the Privy Council.

IDROOS LEBBE MARICAR ABDUL AZEEZ

v.

MOHAMED ISMAIL ABDUL RAHIMAN MUDLIYAR.

DELIVERED BY LORD SHAW.

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