

17, 1968

17

No.....32....OF 1966

Supreme Court of Ceylon,
No. 146 (Final) of 1961.

District Court of Colombo,
Case No. 837/ZL.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL
FROM THE SUPREME COURT OF CEYLON

BETWEEN

- 1. NILAMDEEN MOHAMED ISHAK, and
- (Dead) 2. ABDUL RAHMAN MOHAMED RAUOOF, both of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
- 3. M. R. M. SIDDEEK, of No. 14/4, Baptist Chapel Road, Colombo, (substituted in place of the 2nd Defendant-Appellant who is dead.)

(Defendants - Appellants)
Appellants.

AND

- 1. IBRAHIM LEBBE MOHAMED THOWFEEK of No. 26, 1st Mosque Lane, Colombo 12.
- 2. COLONDA MARIKAR SHAHUL HAMID of No. 180/11, Maligawatta Road, Colombo 10.

(Plaintiff - Respondent.)

(Defendant - Respondent)
Respondents.

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
16 JAN 1969
25 R. ... L SQUARE
... W.C.1.

RECORD
OF PROCEEDINGS

No.....**32**.....**OF 1966**

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2. COLONDA MARIKAR SHAHUL HAMID of No. 180/11, Maligawatta Road, Colombo 10.

(Plaintiff - Respondent.)

(Defendant - Respondent)
Respondents.

**RECORD
OF PROCEEDINGS**

(i)

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Journal Entries

IN THE DISTRICT COURT OF COLOMBO

No. 1
Journal
Entries—
19-10-59
to
14-11-64

I. L. M. THOUFEEK.....*Plaintiff.*

No. 837/ZL

Class : V.

Amount : Rs. 15,000/-.

Vs.

I. N. M. ISHAK and 2 others.....*Defendants.*

JOURNAL

10 This 19th day of October, 1959.

Mr. M. Wagisa Perera, files appointment and **Plaint** together with (Documents marked) **Petition** and **Affidavit**.

(1) **Plaint** accepted and **Summons** ordered for 9.12.59.

For reasons stated in the affidavit moves for an interim injunction — restraining the respondent and their servants and agents from demanding or receiving rents and profits from the immovable and movable property described in the schedule to the **plaint**.

20 (B) From demanding, receiving or collecting the offerings and contributions to the said Mosque and Shrine.

(C) From preventing or otherwise hindering **Petitioner** from performing his duties as **Trustee** of the said Mosque and Shrine.

(D) For **Costs**.

Support re - injunction.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge.
22.10.59.

(2) 22-10-59 Case called.

30 Mr. Wagisa Perera in support.

Vide proceedings.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

(3) 2-11-59 Enjoining order together with Notice of application for injunction.

Issued on Defendants - Respondents.

(Intld.).....

(4) 5-11-59 Third Defendant files an affidavit and states that he shall abide by the Court order dated 22.10.59.

File.

(Intld.).....
Additional District Judge.

(5) 6-11-59 Mr. M. Wagisa Perera.

10

Vide proceedings of 22-10-59.

Case called.

Enjoining order together with notice of application for injunction served on 1st — 3rd Defendants - Respondents.

They are absent.

Mr. Perera addresses Court and moves that his application for an interim injunction be allowed. He refers to the affidavit filed at the proceedings of 22-10-59.

ORDER

I am satisfied that the Plaintiff - Petitioner is entitled to an interim injunction as prayed for in his petition, the application is allowed.

(Sgd.) A. L. S. SIRIMANE,
6-11-59.

Later

Mr. Kandiah with Mr. Amit instructed by Mr. Zackiya.

Vide proceedings.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge,
6-11-59. 30

(6) 10-11-59 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for 1st & 2nd Defendants.

Vide proceedings of 6-11-59.
Objections of 1st & 2nd Defendants due --- filed.
Inquiry 28-1-60.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

(Intld.) A. L. S. S.
A.D.J.

(7) 4-12-59 Summons issued on 1st---3rd Defendants.

(Intld.)

10 (8) 15-12-59 This case was not called on 9-12-59 the Summons
returnable date, Proctor for Plaintiff moves that Court
be pleased to grant him an early date to issue summons
on Defendants.

Issue summons for 28-1-60.

(Sgd.) A. L. S. SIRIMANE.
Additional District Judge.
16-12-59.

(9) 23-12-59 Summons issued on 1st-- 3rd Defendants.

(Intld.)

20 (10) 22-1-60 Proctor for 1st & 2nd Defendants - Respondents files list
of witnesses and Documents and moves for summons.

Proctor for Plaintiff—Petitioner received notice.
Allowed.
Issue summons.

(Sgd.) A. L. S. SIRIMANE.
Additional District Judge.
3-1-60.

(11) 28-1-60 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for 1st & 2nd Defendants.

30 *Vide* Journal entry (6).
Inquiry.
Vide proceedings.
Order tomorrow 29-1-60.

(Sgd.) A. L. S. SIRIMANE.
Additional District Judge.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

(12) 29-1-60 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for Defendants.

Order delivered in open Court.
Answer of 1 & 2 on 29-2-60.
Re-issue summons on 3rd for same day.

(Sgd.) A. L. S. SIRIMANE.
29-1-60.

(13) 12-2-60 Proctor for 1st & 2nd Defendants files Bill of costs of the
inquiry & moves that same be taxed.

Proctor for Plaintiff received notice. 10

Tax bill in due course.

(Sgd.) A. L. S. SIRIMANE.
Additional District Judge.
23-2-60.

(14) 24-2-60 1st & 2nd Defendants Bill of costs of inquiry payable by
plaintiff.

| | | | |
|-------------------|-----|-----|-------------|
| Incurring cost | ... | ... | 685.00 |
| Prospective costs | ... | .. | 94.90 |
| | | | <hr/> |
| | | | 779.90 |
| | | | <hr/> <hr/> |

(Intld.) 20
Asst. Secy. (L).
24-2-60.

(13) 29-2-60 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for Defendants.

Vide Journal entry (12).
Answer of 1st & 2nd Defendants due --- filed.
Summons on 3rd Defendant not re-issued.
Re-issue now for 28-3-60.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge. 30
29-2-60.

(14) 10-3-60 Proctor for 1st & 2nd Defendants applied for execution of Decree by issue of Writ of execution against Plaintiff.
 Allowed.
 Issue Writ.

No. 1
 Journal
 Entries—
 19-10-59
 to
 14-11-64
 —Continued.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge,
 11-3-60.

(15) 24-3-60 Writ issued against Plaintiff.
 Returnable 10-3-61.

10

(Intld.)

(16) 28-3-60 Mr. M. W. Perera for Plaintiff.
 Mr. A. A. K. Zackiya for Defendants.

Vide Journal entry (13).
 Summons not re-issued on 3rd Defendant
 Re-issue now for 9-5-60.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge.

(17) 9-5-60 Mr. M. W. Perera for Plaintiff.
 Mr. A. A. K. Zackiya for Defendants.

20

Vide Journal entry (16).
 Summons on 3rd Defendant not re-issued.
 Re-issue now for 6-6-60.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge.

(18) 7-6-60 Mr. M. W. Perera for Plaintiff.
 Mr. A. A. K. Zackiya for Defendants.

30

Vide Journal entry (17).
 Summons not re-issued yet on 3rd Defendant.
 Re-issue finally for 30-8-60.
 Replication if any on same day.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge,
 7-6-60.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

- (19) 25-6-60 Proctor for Plaintiff *vide* motion moves that the Court be pleased to delete the name of A. C. M. Uvais and insert the name of N. Sinnathamby in the Plaint and Petition.

Amend accordingly.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge,
27-6-60.

- (20) 28-6-60 Proctor for Plaintiff files petition and affidavit of Plaintiff and for reasons stated therein moves. 10

(1) To recall writ of execution.

(2) Make order that Plaintiff is not personally liable to pay costs from his private funds or property.

(3) For costs.

Proctor for 1st and 2nd Defendants received notice. Move with notice to Defendant on 27-7.

(Sgd.) A. L. S. SIRIMANE,
30-6-60.

- (21) 22-7-60 Mr. M. W. Perera for Plaintiff. 20
Mr. A. A. K. Zackiya for 1st and 2nd Defendants.

Vide Journal entry (20).
Notice not yet issued on Defendants.
Plaintiff and Proctor absent.
No order.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge,
22-7-60.

- (22) 27-7-60 Journal entry (20) Case called. 30
Case has been called on 22-7-60 by an error.
Plaintiff and Proctor absent again.
No order.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge.

- (23) 30-8-60 Mr. M. W. Perera for Plaintiff — Present.
Mr. A. A. K. Zackiya for Defendant instructing
Mr. Mansoor.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

Vide Journal entry (18).

Summons on 3rd Defendant not re-issued yet although
final date was given on 7-6-60.

Mr. Perera states that he is not proceeding against the
3rd Defendant and moves that the case be fixed for
trial against 1st and 2nd Defendants.

Action against 3rd Defendant is dismissed.

Trial (against 1st and 2nd) 14-2-61.

10

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge,
30-8-60.

- (24) 13-2-61 Proctor for Plaintiff moves to file Plaintiff's list of wit-
nesses and Documents in the case.

Proctor for 1st and 2nd Defendants received notice.

- (25) 14-2-61 Mr. M. W. Perera for Plaintiff, instructed by Mr. Nava-
ratnarajah with Mr. Nazeem and Mr. Sinnatamby.
Mr. A. A. K. Zackiya for Defendants instructed by
Mr. Markani.

20

Vide Journal entry (23).

Trial against 1st and 2nd Defendants.

Mr. Markani asks for a date on personal grounds.
He states he has taken down the date as 15-2 by
error.

Trial is re-fixed for 15-2-61.

By consent each party will bear his own cost of today.

30

(Intld.) O. L. de K.,
Additional District Judge,
14-2-61.

- (26) 15-2-61 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for Defendant.

Vide Journal entry (25).

Trial against 1st and 2nd Defendants.

Vide proceedings.

Judgment on 6-3-61.

(Intld.) O. L. de K.,
Additional District Judge,
15-2.

40

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

- (26a) Proceedings filed.
- (26b) Documents P1 to P9 D1 and D2 filed.
(Intld.)
- (27) 6-3-61 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for Defendants.

Vide Journal entry (26).
Judgment 13-3.

(Intld.)
Additional District Judge.
- (28) 13-3-61 Mr. M. W. Perera for Plaintiff. 10
Mr. A. A. K. Zackiya for Defendants.

Vide Journal entry (27).
Judgment delivered in Open Court.

(Intld.)
Additional District Judge,
13-3-61.
- (29) 13-3-61 Mr. M. W. Perera for Plaintiff.
Files application for execution of decree by issue of writ
possession and writ against the Defendants.

Let decree be entered in the first instance. 20

(Intld.)
Additional District Judge,
14-3-61.
- (30) 13-3-61 Mr. A. A. K. Zackiya for 1st and 2nd Defendants.
Appellants moves for a paying-in-voucher for Rs. 20/-
being fees for typewritten briefs.

Issue paying-in-voucher.

(Intld.)
Additional District Judge,
14-3-61. 30
- (31) 13-3-61 Mr. A. A. K. Zackiya for 1st and 2nd Defendants-
Appellants tenders petition of appeal together with an
application for typewritten copy of the record, Kach-
cheri receipt for Rs. 20/- and notice of Security to be
served on the Plaintiff—Respondents.

- 1. Petition of appeal accepted.
- 2. Issue notice of security for 29-3-61.
- 3. Call case on 29-3-61.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

(Intld.)
Additional District Judge.

10 (32) 13-3-61 The petition of appeal furnished by the Defendant—Appellants on the 13-3-61, against the judgment and the decree dated 13-3-61, having been received by Court, 1st and 2nd Defendants—Appellants state that their Proctor will on the 29th March, 1961, at 10.45 a.m. and thereafter move to tender Security by depositing Rs. 200/- as Security for any costs which may be incurred by the Respondent in appeal in the premises by hypothecating the same with the Secretary of this Court and will on the said day deposit in Court a sufficient sum of money to cover the expenses of serving notice of appeal.

Issue Paying-in-voucher for Rs. 200/-.

20 (Intld.)
Additional District Judge,
14-3-61.

(33) 13-3-61 Mr. A. A. K. Zackiya for 1st and 2nd Defendants. Petitioners file petition and affidavit and for reasons stated therein moves (a) that the Court be pleased to order execution of the said decree to be stayed pending the decision of appeal.

(b) and for such other and further relief as this Court shall seem meet.

30 Inquiry into application for 24-3-61.
Proctor for Defendant - petitioners to give the date to Proctor for Plaintiff - respondent.

(Intld.)
Additional District Judge.
14-3.

(34) 14-3-61 Proctor for Plaintiff tenders draft decree and moves that his application at Journal entry 29 be now allowed.

- 1. Decree entered of record.
- 2. To await order re Journal Entry 33 (b).

40 (Intld.)
Additional District Judge,
14-3.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

- (35) 14-3-61 Notice of security issued to Fiscal, W. P., to be served on Plaintiff - Respondent. (Intld.)
- (36) 24-3-61 Inquiry (1).
Mr. Advocate Wickremanayake with Mr. Markani duly instructed for the Defendant - Petitioner.
Mr. Advocate Navaratnarajah and Mr. Sinnathamby for the Plaintiff - Respondent.

The defendant, Mr. Wickremanayake concedes will have to give security if writ to be stayed. Stay writ on Defendant giving security in Rs. 1,000/- cash. If this is done, it is further agreed that Defendant would deposit to the credit of this case every month commencing from 10-4-61 the money left over after making necessary payments together with proof of these payments and that if he fails to do so Plaintiff will be entitled to take out writ.

(Intld.) O. L. de K.
Additional District Judge,
24-3-61. 20

- (37) 29-3-61 Mr. A. A. K. Zackiya for 1st and 2nd Defendants.
Mr. M. W. Perera for Plaintiff - Respondent.

Vide Journal entry (31).
Notice of security served on Plaintiff - Respondent and Defendant - Respondent.
I. L. M. Thoufeek—Plaintiff - Respondent. } absent.
C. M. Shahul Hameed—Defendant - Respondent.

Security accepted.
Perfect Bond. 30
Issue Notice of appeal for 31-5-61.

(Intld.)
Additional District Judge.

- (38) 3-4-61 Proctor for 1st and 2nd Defendant - Appellants files security Bond duly signed before the Court together with Kachcheri receipt for Rs. 200/- and notice of appeal to be served on the Proctor for Plaintiff.

1. File.
2. Issue notice of appeal as already ordered for 31-5-61. 40

(Intld.)
Additional District Judge,
3-4-61.

- (39) 3-4-61 Proctor for 1st and 2nd Defendants—moves for a Deposit Note for Rs. 1,000/- being security in terms of the order made.
Issue Paying-in-voucher for Rs. 1,000/-.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

(Intld.)
Additional District Judge.

- (40) 6-4-61 Notice of appeal issued on Proctor for Respondent — M. W. Perera — Fiscal W. P.

(Intld.)
P. HERATH.

10

- (41) 10-4-61 Proctor for 1st and 2nd Defendant - Appellants file Kachcheri receipt for Rs. 1,000/- together with Security Bond.

File.

(Sgd.)
Additional District Judge,
11-4-61.

- (42) 10-4-61 Proctor for 1st and 2nd Defendants files Balance Sheet and moves for a Deposit Note for Rs. 4/43.

Issue Deposit Note for Rs. 4/43.

20

(Sgd.)
Additional District Judge,
11-4-61.

- (43) 6-5-61 Kachcheri receipt Y/15 No. 1025/888349 of 11-4-61 for Rs. 4/43 filed.

- (44) 9-5-61 Proctor for 1st and 2nd Defendants tenders Balance Sheet for the month ending 30th April, 1961 and together with receipts of payment marked A 25 to A 56 and moves that the same be filed of record.
And also moves that the Court be pleased to issue a Deposit Note for Rs. 7/81.

30

Issue Deposit Note for Rs. 7/81.

(Intld.)
Additional District Judge,
9-5-61.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

(45) 20-5-61 Kachcheri receipt Y/15 No. 742 890738 of 10-5-61 for Rs. 7/81 filed.

(46) 31-5-61 Mr. A. A. K. Zackiya for 1st & 2nd defendants—appellants. Mr. M. W. Perera for plaintiff—respondent.

Vide Journal entry (37).

Notice of appeal served on Mr. M. W. Perera — Proctor for respondent.

Forward appeal in due course.

(Intld.)
Additional District Judge, 10
31-5.

(47) 9/13-6-61 Proctor for 1st and 2nd defendants tenders the balance sheet for the month of 31st May 1961 together with receipts of payments A57 to A83 and moves that the same be filed of record.

He also moves for a Deposit Note for Rs. 5/16 in order to deposit same.

Furnish deficiency of stamps -/50 cts. & move.

(Intld.)
Additional District Judge, 20
13-6-61.

(48) 14/15-6-61 Proctor for 1st and 2nd defendants tenders uncanceled stamp to the value of cents fifty (-/50) being deficiency due on the last balance sheet and moves to accept same.

1. Bring stamps to account.
2. Issue Deposit Note for Rs. 5/16.

(Intld.)
Additional District Judge,
16-6-61.

(49) 17-6-61 Kachcheri receipt Y/15 No. 1452/895356 of 15-6-61 for 30 Rs. 5/16 filed.

(50) 8/10-7-61 Proctor for 1st and 2nd defendants tenders the balance sheet of the Dewatagaha Mosque for the month ending 30th June 1961 together with receipts marked A84—A118 and moves that the same be filed of record.

He further moves that the Court be pleased to issue him a Deposit Note for Rs. 5/81 in order to bring the cash balance to the credit of this case.

Issue Deposit Note for Rs. 5/81.

(Intld.)
Additional District Judge, 40
10-7-61.

(51) 15-7-61 Kachcheri receipt Y/15 No. 1073/899106 of 11-7-61 for Rs. 5/81 filed.

No. 1
Journal
Entries ---
19-10-59
to
14-11-61
—Continued.

(58) 9/10-8-61 Proctor for 2nd and 3rd defendants tenders balance sheet for the month ending 31-7-61 of Dewatagaha Mosque together with receipts of payment marked A119 to A 143 and moves that the same be filed of record.

Issue Deposit Note for Rs. 11/-.

(Intld.)
Additional District Judge.
11-8-61.

10

(59) 26-8-61 Kachcheri receipt A/16 No. 2244/261892 of 17-8-61 for Rs. 11/- filed.

(60) 8/11-9-61 Proctor for 2nd and 3rd defendants tenders balance sheet for August 1961.

He also moves for a Deposit Note for Rs. 6/10.
Issue Deposit Note.

(Intld.)
Additional District Judge,
11-9-61.

20 (61) 23-9-61 Kachcheri receipt A/16 No. 2044/265557 of 15-9-61 for Rs. 6/10 filed.

(62) 28/29-9-61 Proctor for Plaintiff files an affidavit and moves for the reason stated therein that the Court be pleased to allow the Plaintiff to take out writ of possession.

Notice defendants for 1-11-61.

(Intld.)
Additional District Judge.

(63) 7/11-10-61 Proctor for Plaintiff tenders balance sheet and moves that the same be filed of record.

30

He also moves for a Deposit Note for Rs. 11/24 to the credit of this case.

Issue Deposit Note.

(Intld.)
Additional District Judge,
11-10-61.

(64) Notice issued on Defendants, W. P.

(Intld.)

(65) 21-10-61 Kachcheri receipt A/16 No. 1439/270215 of 12-10-61 for Rs. 11/24 filed.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

(66) 1-11-61 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for Defendants.

Vide Journal entry (62).
Notice of Writ of possession served on
1 D — N. M. Ishak — absent
2 D — A. Rahaman Mohamed Rauff — absent on
being pointed out.

.....
Objections on 27-11.

(Intld.) 10

(67) 9/10-11-61 Proctor for 1st and 2nd defendants tenders balance sheet
for the month of October and moves for a Deposit Note
for Rs. 1/66.

Issue Deposit Note.

(Intld.)
Additional District Judge,
14-11-61.

(68) 25-11-61 Kachcheri receipt A/16 No. 2880/277981 of 23-11-61 for
Rs. 1/66 filed.

(69) 27-11-61 Mr. M. W. Perera for Plaintiff. 20
Mr. A. A. K. Zackiya for Defendant.

Vide Journal entry (66).
Objections of 1st and 2nd Defendants against the issue
of writ.
No objection.
Same for 22-1-62.

(Intld.)

(70) 9/10-12-61 Mr. A. A. K. Zackiya for 1st and 2nd defendants tenders
balance sheet for the month ending 30-11-61 together
with receipts marked A213 to A243 and moves that 30
the same be filed of record.

He also moves for a Deposit Note for Rs. 10/05.

Issue Deposit Note.

(Intld.)
Additional District Judge,
15-1-62.

- (71) 9/10-1-62 Mr. A. A. K. Zackiya for 1st and 2nd defendants tenders balance sheet for the month ending 31st December, 1961 together with receipts marked A244 to A267 and moves that the same be filed of record.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

He also moves for a Deposit Note for Rs. 3/06 to deposit the same to the credit of this case.

Issue Deposit Note.

(Intld.)
Additional District Judge.

- 10 (72) 22-1-61 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for Defendants.

Vide Journal entry (69).
Objections of 1st and 2nd Defendants against the issue of writ Filed.
Inquiry on 29-3-62.

(Intld.)

- (73) 27-1-62 Kachcheri receipt A/16 No. 2507/288125 of 20-1-62 for Rs. 10/05 filed.

- 20 (74) 27-1-62 Kachcheri receipt A/16 No. 2324/287942 of 17-1-62 for Rs. 3/06 filed.

- (75) 9/10-2-62 Proctor for 1st and 2nd defendants tenders the balance sheet for the month ending 31-1-62 together with receipts marked A268 to A291 and moves that the same be filed.

He also moves for a Deposit Note for Rs. 6/17 to enable him to deposit to the credit of this case.

Issue Deposit Note.

(Intld.)
Additional District Judge,
12-2-62.

30

- (76) 17-2-62 Kachcheri receipt A/16 No. 1684/292620 of 13-2-62 for Rs. 6/17 filed.

- (77) 12-3-62 Record forwarded to the Registrar, Supreme Court together with Supreme Court Stamps.

(Sgd.)
Assistant Secretary.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

(73) 7/15-3-62 Proctor for 1st — 2nd defendants tender balance sheet for the month ending 28-2-1962 together with receipts marked A292 — A319 and moves that the same be filed.

He also moves for a Deposit Note for Rs. 4/49.

Issue Deposit Note.

(Sgd.)
Additional District Judge,
16-3-62.

(74) 28-3-62 Mr. M. W. Perera for Plaintiff with notice to Proctor for 10 Defendants files defendants' list of witnesses and documents.

No time to cite.

(Sgd.)
Additional District Judge.

(75) 29-3-62 *Vide* Journal entry (72) Enquiry.
Mr. Navaratnarajah with Mr. Nazim (instructed by)
Mr. M. W. Perera for Plaintiff.
Mr. Kandiah with Mr. Markani (instructed by)
Mr. A. A. K. Zackiya for defendants. 20

Of consent inquiry refixed for 16-5-62.

(Sgd.)
Additional District Judge.

(76) 10/24-4-62 Proctor for defendants tenders balance sheet for the
1. month ending 31-3-62 together with receipts marked
A320 to 342 and moves that the same be filed of record.

2. He also moves that the Court be pleased to issue him
a Deposit Note for Rs. 2/90 to enable him to deposit
same to the credit of this case.

1. File. 30
2. Issue Deposit Note.

(Sgd.)
Additional District Judge,
26-4-62.

- (77) 7/9-5-62 Proctor for 1st and 2nd defendants tenders balance sheet for the month ending 30th April 1962 together with receipts marked A 343 to A380.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

He also moves that the Court be pleased to issue him a Deposit Note for Rs. 6/60 to enable him to deposit same.

Issue Deposit Note.

(Sgd.)
Additional District Judge,
9-5-62.

- 10 (78) 15-5-62 Kachcheri receipt A/16 No. 1223/306779 of 10-5-62 for Rs. 2/90 filed.

- (79) 15-5-62 Kachcheri receipt A/16 No. 1721/302316 of 12-4-62 for Rs. 4/49 filed.

- (80) 16-5-62 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for defendants.

Inquiry *vide* Journal entry (75).
Vide proceedings.
Inquiry on 1-8-62.

(Sgd.)

- 20 (81) 6-6-62 Kachcheri Receipt A/16 No. 2179/307735 of 22-5-62 for Rs. 6/60 filed.

- (82) 7/8-6-62 Proctor for 1st and 2nd defendants tenders balance sheet for the month ending 31-5-62 with receipts A381 to A400 and moves to file same.

He further moves that the Court be pleased to issue him a Deposit Note for Rs. 10/40 in order to deposit same to the credit of this case.

Issue Deposit Note.

(Sgd.)
Additional District Judge,
11-6-62.

30

- (83) 27-6-62 Kachcheri receipt A/16 No. 1447/311347 of 12-6-62 for Rs. 10/40 filed.

- (84) 9/10-7-62 Proctor for 1st and 2nd defendants files the balance sheet for the month ending 30th June 1962 together with receipts marked A401 to A427 and moves that the Court be pleased to file same of record.

He also moves for an order for Deposit Note for Rs. 1/90 in order to deposit same to the credit of this case.

Issue Deposit Note.

(Sgd.)
Additional District Judge,
11-7-62,

40

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

- (85) 21-7-62 Kachcheri receipt C/16 No. 1781/212688 of 13-7-62 for Rs. 1/90 filed.
- (86) 1-8-62 Mr. Nazim (instructed by) Mr. M. W. Perera for Plaintiff Mr. Kandiah with Mr. Markani (instructed by) Mr. A. A. K. Zackiya for defendants.

Vide Journal Entry (80)
Inquiry.
Of consent inquiry refiled for 19-11-62.

(Sgd.)
Additional District Judge. 10

- (87) 9/10-8-62 Proctor for 1st and 2nd defendants tenders balance sheet for the month ending 31-7-62 together with documents marked A 428 to A 449 and moves that the same be filed of record.

He also moves that the Court be pleased to issue him a Deposit Note for Rs. 6/70.

Issue Deposit Note.

(Sgd.)
Additional District Judge.
11-8-62. 20

- (88) 27-8-62 Kachcheri receipt C/6 No. 1978/216871 of 16-8-62 for Rs. 6/70 filed.
- (89) 8/10-9-62 Proctor for 1st and 2nd defendants files balance sheet for the month ending 31-8-62 together with receipts marked A450 to A479.

He also moves for a Deposit Note for Rs. 5/65 to enable him to deposit same.

Issue Deposit Note.

(Sgd.)
Additional District Judge. 30
11-9-62.

- (90) 22-9-62 Kachcheri receipt C/16 No. 1914/220778 of 14-9-62 for Rs. 5/65 filed.
- (91) 8/9-10-62 Proctor for 1st and 2nd defendants tenders Balance sheet for the month ending 30-9-62 together with receipts marked A480 to A501 and moves to accept same.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
--Continued.

He also moves that the Court be pleased to issue him a Deposit Note for Rs. 4/87 to enable him to deposit same to the credit of this case.

Issue Deposit Note.

10

(Sgd.)
Additional District Judge.
15-10-62.

- (92) 8-11-62 Kachcheri receipt C/16 No. 2216/225367 of 17-10-62 for Rs. 4/87 filed.
- (93) 9/13-11-62 Proctor for 1st and 2nd defendants tenders Balance sheet for the month ending 31-10-62 together with receipts marked A 502 to A 529.

He also moves for a Deposit Note for Rs. 5/92.

Issue Deposit Note.

20

(Sgd.)
Additional District Judge.

- (94) 19-11-62 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for defendants.

Vide Journal entry (86).

Inquiry.

Vide proceedings. Of consent inquiry on 5-3-63.

(Sgd.)
Additional District Judge.

- (95) 11-12-62 Proctor for 1st and 2nd defendants tenders Balance sheet for the month ending 30th November 1962 together with documents marked A 530 to A549 and moves that the same be filed of record.

30

He also moves for a Deposit Note for Rs. 3/95.

Issue Deposit Note.

(Sgd.)
Additional District Judge.
12-12-62.

- (95) 15-12-62 Kachcheri receipt C/16 No. 3804/233682 of 30-11-62 for Rs. 5/92 filed.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

- (96) 8/11-1-63 Proctor for defendants tenders Balance sheet for the month ending 31-12-62 together with documents marked A550 to A 576.

He also moves for a Deposit Note for Rs. 2/18

Issue Deposit Note.

(Sgd.)
Additional District Judge.
11-1-63.

- (97) 26-1-63 Kachcheri receipt C/16 No. 3065/236796 of 26-12-62 for Rs. 3/95 filed. 10

- (98) 9-2-63 Kachcheri receipt C/16 No. 323/243966 of 5-2-63 for Rs. 2/18 filed.

- (99) 9/13-2-63 Proctor for defendants tenders Balance sheet for the month ending 31st January 1963 together with documents marked A577 to A601.

He also moves for a Deposit Note for Rs. 2/06 to enable him to deposit same to the credit of this case.

1. File balance sheet.
2. Issue Deposit Note for Rs. 2/06.

(Sgd.) 20
Additional District Judge.
16-2-63.

- (100) 5-3-63 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for defendants.

Vide Journal entry (94) Enquiry.
Appeal is pending.
Of consent — call — 4-6-63.

(Sgd.)
Additional District Judge.

- (101) 8/9-3-63 Proctor for defendants tenders Balance sheet for the month ending 28-2-63 together with receipts marked A602 to A623. 30

He also moves for a Deposit Note for -/40 cts.

1. File Balance sheet.
2. Issue Deposit Note for -/40 cts.

(Sgd.)
Additional District Judge.
12-3-63.

- (102) 16-3-63 Kachcheri receipt C/16 No. 3067/246710 of 28-2-63 for Rs. 2/06 filed. No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.
- (103) 3-4-63 Kachcheri receipt C/16 No. 2816/249930 of 23-3-63 for -/40 cts filed.
- (104) 9/10-4-63 Proctor for 1st and 2nd defendants tenders Balance sheet for the month ending 31-3-63, together with receipts marked A624 to A657 and moves that the same be filed of record.

10 He also moves for Deposit Note for Rs. 2/68 to enable him to deposit same to the credit of this case.

1. File.
2. Issue Deposit Note for Rs. 2/68.

(Sgd.)
Additional District Judge.
10-4-63.

- (105) 9/10-5-63 Proctor for defendants tenders Balance sheet for the month ending in 30-4-63 together with receipts marked A658 --- A 685 and moves that the same be filed of record.

20 He also moves for a Deposit Note for Rs. 6/63.

1. File.
2. Issue Deposit Note for Rs. 6/63.

(Sgd.)
Additional District Judge.
10-5-63.

- (106) 1-6-63 Kachcheri Receipt D/16 No. 2760/721169 of 27-5-63 for Rs. 6/63 filed.

- (107) 4-6-63 Mr. M. W. Percera for Plaintiff.
Mr. A. A. K. Zackiya for Defendants.

30 *Vide* Journal Entry (100)
Case called.
Call case on 29-7-63.

(Sgd.)

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

- (108) 7/11-6-63 Proctor for 1st and 2nd Defendants tenders Balance sheet for the month ending 31-5-63 together with documents marked A686 to A707.

He also moves for a Deposit Note for Rs. 7/27.

1. File.
2. Issue Deposit Note for Rs. 7/27.

(Sgd.)
Additional District Judge,
11-6-63.

- (109) 9/10-7-63 Proctor for Defendants tenders Balance sheet for the month of June 1963 with documents marked A708 to A724 and moves that the same be filed of record.

He also moves for a Deposit Note for Rs. 4/46.

1. File.
2. Issue Deposit Note for Rs. 4/46.

(Sgd.)
Additional District Judge,
10-7-63.

- (110) 12-7-63 Deposit Note No. B.013498 for Rs. 11/73 (7.27 + 4.46) issued *vide* Journal Entry (108) & Journal Entry (109).

(Intld.)

- (111) 26-7-63 Kachcheri Receipt D/16 No. 3170/730625 of 23-7-63 for Rs. 11/73 filed.

- (112) 29-7-63 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for Defendant.

Case called.
Vide Journal Entry (107).
Call case on 30-9-63.

(Sgd.)
Additional District Judge. 30

- (113) 9/13-8-63 Ist and 2nd defendants tender Balance sheet for the month of July 1963 together with documents marked A725 to A745.

They also move for a Deposit Note for Rs. 2/97 — *Vide* motion.

1. File.
2. Issue Deposit Note for 2/97.

(Sgd.)
Additional District Judge.

(114) 17-8-63 Deposit Note No. B.079171 issued.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
--Continued.

(Intld.)

(115) 30-8-63 Kachcheri Receipt D/16 No. 3538/735370 of 27-8-63 for Rs. 2/97 filed.

(116) 9/19-9-63 Proctor for 1st and 2nd Defendants tenders the Balance sheet for the month of August 1963 together with documents marked A746 to A769 and moves that the same be accepted.

He also moves for a Deposit Note for Rs. 1/44.

10

1. File.
2. Issue Deposit Note for Rs. 1/44.

(Sgd.)
Additional District Judge,
19-9-63.

(117) 30-9-63 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for Defendants.

Case called — *Vide* Journal Entry 112.

Advocate Mr. Nazim duly instructed for Plaintiff - Respondent. The judgment in this case is now in appeal. The application in this case at this stage is for execution. The Plaintiff - Respondent has applied for execution which has not been considered of consent, until the appeal is disposed of. This case need not now be called in this Court.

20

Forward record to Supreme Court.

(Sgd.) O. L. de KRETZER,
Additional District Judge.

(118) 10/11-10-63 Proctor for 1st and 2nd Defendants tenders Balance sheet for September 1963 together with documents marked A770 to A790.

30

He also moves for a Deposit Note for Rs. 2/60.

1. File.
2. Issue Deposit Note for Rs. 2/60.

(Sgd.)
Additional District Judge.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

- (78) 18/21-10-63 Registrar Supreme Court returns record together with the Supreme Court Decree.
Appeal is dismissed.
Defendant - Appellants to pay Plaintiff - Respondent taxed costs of appeal.
Proctors to note.

(Sgd.)
Additional District Judge,
21-10-63.

- (119) 9/12-11-63 Proctor for 1st and 2nd Defendants tenders Balance sheet 10 for October 1963 together with documents A791 to A810.

He also moves that the Court be pleased to issue him a Deposit Note for Rs. 2/51 to enable him to deposit same to the credit of this case.

1. File.
2. Issue Deposit Note for Rs. 2/51.

(Sgd.)
Additional District Judge,
12-11-63.

- (120) 23-11-63 Kachcheri Receipt D/16 No. 1924/747785 of 14-11-63 for 20 Rs. 6/55 filed.

- (121) 9/11-12-63 Proctor for Defendants moves to tender the Balance sheet for the month ending 30-11-63 together with documents marked A811 to A830.

He also moves for a Deposit Note for Rs. 2/89.

1. File.
2. Issue Deposit Note for Rs. 2/89.

(Sgd.)
Additional District Judge,
16-12-63. 30

- (79) 10-1-64 Kachcheri Receipt E/16 No. 3359/544854 of 31-12-63 for Rs. 2/89 filed.

- (80) 10/15-1-64 Proctor for Defendants tenders Balance sheet for the month of December 1963 together with documents marked A831 to A856 and moves that the same be filed of record.

He also moves for a Deposit Note for Rs. 1/55.

1. File.
2. Issue Deposit Note for Rs. 1/55.

(Sgd.)
Additional District Judge, 40
15-1-64.

- (81) 10/11-2-64 Proctor for Defendants tenders Balance sheet for the month of January 1964 together with documents marked A857 to A880 and moves that the same be filed of record.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

He also moves for a Deposit Note for Rs. 1/17.

1. File.
2. Issue Deposit Note for Rs. 1/17.

(Sgd.)
Additional District Judge.

- 10 (82) 19-2-64 Kachcheri Receipt E/16 No. 972/627782 of 7-2-64 for Rs. 1/55 filed.

- (83) 10/11-3-64 Proctor for 1st and 2nd Defendants tenders Balance Sheet for the month ending 29-2-1964 together with documents marked A881 to A903.

He also moves for a Deposit Note for Rs. 4/24.

1. File.
2. Issue Deposit Note for Rs. 4/24.

(Sgd.)
Additional District Judge,
11-3-64.

- 20 (122) 30-3-64 Kachcheri Receipt E/16 No. 2864/634892 of 23-3-64 for Rs. 4/24 filed.

- (123) 30-3-64 Kachcheri Receipt E/16 No. 2863/634891 of 23-3-64 for Rs. 1/17 filed.

- (84) 14/15-4-64 Proctor for Defendants tenders Balance sheet for month ending 31-3-64 together with documents marked A904 to A926 and moves that the same be filed of record.

He also moves for a Deposit Note for Rs. 4/65.

1. File.
2. Issue Deposit Note for Rs. 4/65.

(Sgd.)
Additional District Judge.

No. 1
Journal
Entries—
19-10-59
to
14-11-64
—Continued.

- (85) 11/12-5-64 Proctor for Defendants tenders Balance sheet for April 1964 with documents.

He also moves for a Deposit Note for Rs. 3/95.

1. File.
2. Issue Deposit Note for Rs. 3/95.

(Sgd.)
Additional District Judge,
12-5-64.

- (86) 16-5-64 Kachcheri Receipt E/16 No. 1397/640986 of 11-5-64 for Rs. 4/65 filed. 10

- (87) 5-6-64 Deputy Fiscal, Colombo returns writ of execution un-executed *vide* report filed.

(Intld.)

- (88) 10/11-6-64 Proctor for Defendants tenders Balance sheet for May 1964 together with receipts and moves for a Deposit Note for Rs. 1/50 to be deposited to the credit of the case.

1. File.
2. Issue Deposit Note for Rs. 1/50.

(Sgd.)
Additional District Judge, 20
11-6-64.

- (89) 6/8-8-64 Registrar Supreme Court, forwards for information a true copy of the Order of Supreme Court dated 25-6-64 and states that Plaintiff - Respondent has deposited with him Rs. 5,000/- and hypothecated this sum by Bond.

1. File.
2. Proctors to take steps.

(Sgd.)
Additional District Judge.

- (90) 8-8-64 N. M. G. Dasthageer files Petition and Affidavit and moves 30 that his objections to the Fiscal Western Province to take possession of the above property be entertained and recorded in the proceedings and that the order be stayed, pending results.

Support before Additional District Judge (B Court)
on 17-8-64.

(Sgd.)
Additional District Judge,
8 8-64.

- (91) 17-8-64 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for Defendants 1st and 2nd.
- Vide* Journal Entry (90).
Case called to support application at Journal Entry (90).
Proxy of N. Mohamed Gulam filed and his Proctor moves
for a date as his Counsel is ill.
Vide proceedings.
Call 24-8-64 for further consideration.
- (Sgd.)
Additional District Judge.
- 10 (92) 24-8-64 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for 1st and 2nd Defendants.
Mr. V. Gunaratne for Intervenient.
- Vide* Journal Entry (91).
Case called for further consideration.
Vide proceedings.
Inquiry on 15-10-64.
- (Sgd.)
- 20 (93) 15-10-64 Mr. M. W. Perera for Plaintiff.
Mr. A. A. K. Zackiya for 1st and 2nd Defendants.
Mr. V. Gunaratne for Intervenient.
- Vide* Journal Entry (92).
Inquiry.
Vide proceedings.
Order tomorrow 16-10-64.
- (Sgd.)
- (94) 16-10-64 Order due :
Delivered in open Court in the presence of Mr. J. A. Perera
for Plaintiff.
30 Mr. Zackiya takes notice on behalf of Intervenient's Proctor.
- (95) 21-10-64 Writ of possession issued against Defendants returnable
24-2-64.
- (Intld.)
- (96) 12-11-64 Deputy Fiscal, Colombo returns writ of possession un-
executed — *vide* report filed.
- (Intld.)
- (124) 14-11-64 Registrar, Supreme Court calls for the record in this case.
Forward record to Supreme Court.
- (Sgd.)
Additional District Judge,
14-11-64.
- 40

Plaint of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque
and Shrine of 26, 1st Mosque Lane, Colombo 12.

No. 837/ZL

Plaintiff.

Vs.

1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
2. Abdul Rahaman Mohamed Rauff 14/41, Baptist Chapel Road, Colombo 7.
3. C. M. Shahul Hamid 180/11, Maligawatte Road, Colombo 10.

10

Defendants.

On this 19th day of October, 1959.

The plaintiff of the Plaintiff abovenamed appearing by M. Wagisa Perera his Proctor states as follows :

1. The defendants reside and the property the subject matter of this action is situate at Colombo within the jurisdiction of this Court.

2. The Dewatagaha Mosque and Shrine have been duly registered ²⁰ under the provisions of the Muslim Mosque and Charitable Trusts or Wakf Act No. 51 of 1956.

3. The plaintiff was duly under the said Act appointed as sole trustee of the said Mosque and Shrine as and from the 22nd August, 1959 and the defendants who were prior to the 22nd August, 1959 the trustees or persons in charge of the said Mosque and Shrine ceased to be such trustees or persons in charge of the said Mosque and Shrine as and from the said date *viz.* 22nd August, 1959.

4. On the Plaintiff being so appointed trustee, there vested in him the plaintiff the said Mosque and Shrine and the movable and immovable ³⁰ property of the said Mosque and Shrine together with the rents and profits thereof and also the offerings and contributions made for the use and benefit of or for the performance of religious ceremonies at the said Mosque and Shrine.

5. And further on the Plaintiff being so appointed Trustee the defendants were obliged under Section 14(4) of the said Act to hand over forthwith to the plaintiff all property and documents relating to the said Mosque and Shrine.

No. 2.
Plaint of the
Plaintiff—
19-10-59.
—Continued.

6. The defendants have failed and neglected to hand over to the plaintiff the property and documents relating to the said Mosque and Shrine though thereto often demanded by the plaintiff and the defendants are now in the wrongful possession of the movable and immovable property of the said Mosque and Shrine and are wrongfully collecting and appropriating the
10 rents and profits of the said property and also the offerings and contributions made for the use and benefit of or to the funds or for the performance of religious ceremonies at the said Mosque and Shrine and the defendants are in the wrongful possession of the mosque and shrine and have thus prevented and are preventing and hindering the plaintiff from performing his duties as the trustee of the said Mosque and Shrine.

7. The movable and immovable property of the Mosque and Shrine as far as the plaintiff has been able to ascertain are set out in the Schedule hereto.

8. (a) The rents and profit from the said movable and immovable
20 property will be about Rs. 600/- per month (b) The offerings and contributions referred to in paragraph 6 above will be about Rs. 2,000/- per month.

9. A cause of action has thus accrued to the plaintiff to sue the defendants (a) for an order requiring the defendants to deliver to the plaintiff the movable and immovable property described in the Schedule hereto and the documents relating thereto.

(b) for an order directing the defendants to be ejected from the said Mosque and Shrine and that plaintiff be placed in possession thereof (c) for an order directing the defendants to be ejected from the immovable property described in the Schedule hereto and that plaintiff be placed in possession
30 thereof (d) for an order directing the defendants to render a true and correct account of rents and profits received by them and also of the offerings and contributions received and collected by them to pay to the plaintiff the amount found due on such account being taken (e) for permanent injunction restraining the defendants and their servants and agents from (i) demanding or receiving the rents and profits from the immovable and movable property described in the Schedule to the plaint (ii) from demanding or receiving or collecting the offerings and contributions to the said Mosque and Shrine (iii) from preventing or otherwise hindering the plaintiff from performing his duties as trustee of the said Mosque and Shrine.

40 10. The plaintiff values this action at Rs. 15,000/-.

11. The plaintiff has duly obtained the approval of the Board constituted under the said Act for the filing of this action.

No. 2.
Plaint of the
Plaintiff—
19-10-59
—Continued.

WHEREFORE The Plaintiff prays :—

- (a) for an order requiring the defendants to deliver to the plaintiff the movable and immovable property described in the Schedule hereto and the documents relating thereto
- (b) for an order directing the defendants to be ejected from the said mosque and shrine and that plaintiff be placed in possession thereof
- (c) for an order directing the defendants to be ejected from the immovable property described in the schedule hereto and that Plaintiff be placed in possession thereof 10
- (d) for an order directing the defendants to render a true and correct account of rents and profits received by them and also of the offerings and contributions received and collected by them and to pay to the plaintiff the amount found due on such an account being taken.
- (e) for permanent injunction restraining the defendants and their servants and agents from
 - (i) demanding or receiving the rents and profits from the immovable property described in the Schedule hereto
 - (ii) from demanding or receiving or collecting the offerings and contributions to the said Mosque and Shrine 20
 - (iii) from preventing or otherwise hindering the plaintiff from performing his duties as trustee of the said Mosque and Shrine.
- (f) for costs of suit and for such other and further relief as to this Court shall seem meet.

(Sgd.) M. WAGISA PERERA,
Proctor for Plaintiff.

THE SCHEDULE ABOVE REFERRED TO :

All that land and premises called and known as Dewatagaha Mosque and Shrine and premises Nos. 14, 12, 8, 10, 10A, 10C, 16, 16A, 16B, 18, 3, 5, 7, 9, 14/2, 14/2A, 14/3, 14/4, 14/5, 14/6, 14/8, and 14/9 situated at Baptist Chapel Road, Cinnamon Gardens, within the Municipality of Colombo and bounded on the North by Baptist Chapel, East by Baptist Chapel Road, West and South by the Colombo Municipal Office. 30

(Sgd.) M. WAGISA PERERA,
Proctor for Plaintiff.

Settled by :

N. SINNATHAMBY — Journal Entry (19).
P. NAVARATNARAJAH,

Advocates.

Petition of the Plaintiff - Petitioner
(with annex marked "A")

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque
and Shrine of No. 26, 1st Mosque Lane, Colom-
bo 12.*Plaintiff.**Vs.*

10

1. N. M. Ishak of Dewatagaha Mosque, Baptist
Chapel Road, Colombo 7.
2. Abdul Rahaman Mohamed Rauff, 14/41, Bap-
tist Chapel Road, Colombo 7.
3. C. M. Shahul Hamid 180/11, Maligawatte
Road, Colombo 10.

*Defendants.*I. L. M. Thoufeek, Trustee of Dewatagaha Mosque
and Shrine of 26, 1st Mosque Lane, Colombo 12.*Plaintiff - Petitioner.*

20

Vs.

1. N. M. Ishak of Dewatagaha Mosque, Baptist
Chapel Road, Colombo 7.
2. Abdul Rahaman Mohamed Rauff 14/41, Bap-
tist Chapel Road, Colombo 7.
3. C. M. Shahul Hamid 180/11, Maligawatte
Road, Colombo 10.

Defendants - Respondents.

On this 19th day of October, 1959.

The PETITION of the Petitioner appearing by M. Wagisa Perera his
30. Proctor states as follows :—1. The Petitioner is the Plaintiff above-named and the respondents
are defendants abovenamed.2. The Dewatagaha Mosque and Shrine have been duly registered
under the provisions of the Muslim Mosque and Charitable Trusts or Wakf
Act No. 51 of 1956. A true copy of the said registration is appended hereto
marked 'A',

No. 3
 Petition of the
 Plaintiff-
 Petitioner—
 19-10-59
 —Continued.

3. The petitioner was duly under the said Act appointed as sole Trustee of the said Mosque and Shrine as and from 22nd August, 1959 and the Respondents who were prior to the 22nd August, 1959 the trustees or persons in charge of the said Mosque and Shrine ceased to be such trustees or persons in charge of the said Mosque and Shrine as and from the said date viz. 22nd August, 1959 a true copy of the appointment of the petitioner as trustee is appended hereto marked ' A '.

4. On the petitioner being so appointed trustee, there vested in him the Petitioner the said Mosque and Shrine and the movable and immovable property of the said Mosque and Shrine together with the rents and profits thereof and also the offerings and contributions made for the use and benefit of or for the performance of religious ceremonies at the said Mosque and Shrine. 10

5. And further on the Petitioner being so appointed trustee the Respondents were obliged under Section 14(4) of the said Act to hand over forthwith to the Petitioner all property and documents relating to the said Mosque and Shrine.

6. The respondents have failed and neglected to hand over to the petitioner the property and documents relating to the said Mosque and Shrine though thereto often demanded by the petitioner and the Respondents are now in the wrongful possession of the movable and immovable property of the said Mosque and Shrine and are wrongfully collecting and appropriating the rents and profits of the said property and also the offerings and contributions made for the use and benefit of or to the funds or for the performance of religious ceremonies at the said Mosque and Shrine and the respondents are in the wrongful possession of the Mosque and Shrine and have thus prevented and are preventing and hindering the Petitioner from performing his duties as the Trustee of the said Mosque and Shrine. 20

7. The movable and immovable property of the Mosque and Shrine as far as the Petitioner has been able to ascertain are set out in the Schedule hereto. 30

8. (a) The rents and profit from the said movable and immovable property will be about Rs. 600/- per month (b) The offerings and contributions referred to in paragraph 6 will be about Rs. 2,000/- per month.

9. The petitioner has requested the respondents to desist from receiving the rents and profits from the said property and also to desist from receiving the contributions and offerings referred to above but the respondents continue to receive and appropriate the said rents and profits and also the offerings and contributions.

10. The respondents are also forcibly preventing the petitioner from performing his duties as trustee of the said Mosque and Shrine.

No. 3
Petition of the
Plaintiff-
Petitioner—
19-10-59
—Continued.

11. Grave and irreparable damage will be caused to the petitioner and also to the due administration of the said trust unless the Respondents and their servants and agents are by interim injunction pending the hearing and determination of the action restrained ; (a) from demanding or receiving the rents and profits from the immovable and movable property described in the Schedule to the plaint (b) from demanding or receiving or collecting the offerings and contributions to the said Mosque and Shrine
10 (c) from preventing or otherwise hindering the Petitioner from performing his duties as trustee of the said Mosque and Shrine.

12. The Petitioner has in the plaint filed by him in these proceedings asked for the delivery of the movable and immovable property and for other relief and also for a permanent injunction restraining the Respondents (a) from demanding or receiving the rents and profits from the immovable and movable property described in the Schedule to the plaint (b) from demanding or receiving or collecting the offerings and contributions to the said Mosque and Shrine (c) from preventing or otherwise hindering the Petitioner from performing his duties as trustee of the said Mosque and
20 Shrine.

Wherefore the petitioner prays for an interim injunction restraining the Respondents and their servants and agents :—

(a) from demanding or receiving the rents and profits from the immovable and movable property described in the Schedule to the plaint.

(b) from demanding or receiving or collecting the offerings and contributions to the said Mosque and Shrine.

(c) from preventing or otherwise hindering the Petitioner from performing his duties as trustee of the said Mosque and Shrine.

(d) for costs of suit, and for such other and further relief as to this
30 Court shall seem meet.

(Sgd.) M. WAGISA PERERA,
Proctor for Petitioner.

Settled by :

A. C. M. UVAIS,
P. NAVARATNARAJAH,
Advocates.

No. 3
Petition of the
Plaintiff-
Petitioner--
19-10-59
—Continued.

Annex
marked " A ".

" A "

My No. R/334/C. 37
Department of Mosques and Muslim Charitable Trusts,
P. O. Box 543.
Colombo 3. 27th August, 1959.

Registration of Mosques & Appointment of Trustees

Sir,

I have the honour to inform you that the Wakfs Board has been pleased to register the Dewatagaha Mosque & Shrine situated at Cinnamon Gardens, in terms of Section 13 of the Muslims Mosque and Charitable Trusts or 10 Wakfs Act, No. 51 of 1956. The registration number assigned is R/334/C. 37, which should be quoted on all correspondence with this Department.

2. The Board has also been pleased to appoint you as the Trustee of the said Mosque/Shrine with effect from 22-8-59.

3. You will function as Trustee for the period ending on 31-12-59.

4. You should furnish the following statements on the due dates.

| | <u>Due date</u> |
|--|---|
| (a) Half-yearly statement of Accounts in terms of Section 27 of the Act on Form C. | Before end of July and January each year. |
| (b) Statement of Income in terms of Section 46 of the Act on Form E. (Specimen forms C and E are attached) | Before 1st day of June in each year. |

20

5. A copy of the Half-yearly statement of Accounts (Form C) should be exhibited for a period of thirty days in a conspicuous position in the premises of the mosque.

6. You should maintain the following Registers and Books :—

(a) A Register of members of the Jama'ath.

(b) An Inventory Book of all articles and properties belonging to 30 the mosque/shrine (A specimen copy is attached).

7. Your powers and responsibilities are defined in Sections 16 to 27 of the Act.

8. Please deposit all monies in excess of the Rupees one hundred in the name of the mosque in one of the following Banks :—

- (a) Post Office Savings Bank.
- (b) Ceylon Savings Bank.
- (c) Bank of Ceylon.
- (d) Any recognised Commercial Bank.

No. 3
Petition of the
Plaintiff-
Petitioner—
19-10-59
—Continued.

Annex
marked "A".

Kindly let me know the name of the Bank as soon as the money has been deposited.

I am, Sir,

Your Obedient Servant,

(Sgd.) M. Z. MOHIDEEN

*Commissioner for Mosques and
Muslim Charitable Trusts.*

I. L. M. THOUFEEK, Esqr.,
26, 1st Mosque Lane,
Colombo 12.

True Copy.

(Sgd.) T. DURAIRATNAM.
for Commissioner for Mosques &
Muslim Charitable Trusts.
13-10-59.

No. 4

Affidavit of the Plaintiff - Petitioner

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque and Shrine of 26, 1st Mosque Lane, Colombo 12.

Plaintiff.

Vs.

- 1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
- 2. Abdul Rahman Mohamed Rauff, 14/41, Baptist Chapel Road, Colombo 7.
- 3. C. M. Shahul Hamid, 180/11, Maligawatte Road, Colombo 10.

Defendants.

No. 4
Affidavit of the
Plaintiff-
Petitioner—
19-10-59

No. 4
Affidavit of the
Plaintiff-
Petitioner—
19-10-59
—Continued.

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque and Shrine of 26, 1st Mosque Lane, Colombo 12.

Plaintiff - Petitioner.

Vs.

1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
2. Abdul Rahaman Mohamed Rauff, 14/41, Baptist Chapel Road, Colombo 7.
3. C. M. Shahul Hamid 180/11, Maligawatte Road, Colombo 10.

10

Defendants - Respondents.

I, I. L. M. Thoufeek, Trustee of Dewatagaha Mosque and Shrine of 26, 1st Mosque Lane, Colombo 12, being a Muslim do hereby solemnly sincerely and truly declare and affirm as follows :—

1. I am the Petitioner abovenamed, and the plaintiff and the respondents are the defendants abovenamed.

2. The Dewatagaha Mosque and Shrine have been duly registered under the provisions of the Muslim Mosque and Charitable Trusts or Wakf Act No. 51 of 1956. A true copy of the said registration is appended hereto 20 marked " A ".

3. I was under the said Act duly appointed as sole trustee of the said Mosque and Shrine as and from the 22nd August, 1959 and the respondents who were prior to the 22nd August, 1959 the trustees or persons in charge of the said Mosque and Shrine ceased as and from the said date 22nd August, 1959. A true copy of my appointment as Trustee is appended hereto marked " A ".

4. On my being so appointed trustee, there vested in me the said Mosque and Shrine and the movable and immovable property of the said Mosque and Shrine together with the rents and profits thereof and also the 30 offerings and contributions made for the use and benefit of or for the performance of religious ceremonies at the said Mosque and Shrine.

5. And further on my being so appointed Trustee the Respondents were obliged under Section 14(4) of the said Act to hand over to me forthwith all property and documents relating to the said Mosque and Shrine.

6. The Respondents have failed and neglected to hand over to me the property and documents relating to the said Mosque and Shrine though thereto often demanded by me and the Respondents are now in the wrongful possession of the movable and immovable property of the said Mosque and Shrine and are wrongfully collecting and appropriating the rents and profits 40 of the said property and also the offerings and contributions made for the use and benefit of or to the funds or for the performance of religious ceremonies

at the said Mosque and Shrine and the Respondents are in the wrongful possession of the Mosque and Shrine and have thus prevented and are preventing and hindering me from performing my duties as the Trustee of the said Mosque and Shrine.

No. 4
Affidavit of the
Plaintiff-
Petitioner—
19-10-59
—Continued.

7. The movable and immovable property of the Mosque and Shrine as far as I have been able to ascertain are set out in the Schedule to the plaint.

8. (a) The rents and profits from the said movable and immovable property will be about Rs. 600/- per month (b) the offerings and contributions referred to in paragraph 6 above will be about Rs. 2,000/- per month.

10 9. I have requested the respondents to desist from receiving the rents and profits from the said property and also to desist from receiving the contributions and offerings referred to above but the respondents continue to receive and appropriate the said rents and profits and also the offerings and contributions.

10. The Respondents are also forcibly preventing me from performing my duties as Trustee of the said Mosque and Shrine.

11. Grave and irreparable damage will be caused to me and also to the due administration of the said trust unless the respondents and their servants and their agents are by interim injunction pending the hearing and determination of the action restrained (a) from demanding or receiving the rents and profits from the immovable and movable property described in the Schedule to the plaint (b) from demanding or receiving or collecting the offerings and contributions to the said Mosque and Shrine (c) from preventing or otherwise hindering me from performing my duties as trustee of the said Mosque and Shrine.

12. I have in the plaint filed by me in these proceedings asked for the delivery of the movable and immovable property and for other relief and also for a permanent injunction restraining the Respondents (a) from demanding or receiving the rents and profits from the immovable and movable property described in the Schedule to the plaint (b) from demanding or receiving or collecting the offerings and contributions to the said Mosque and Shrine (c) from preventing or otherwise hindering me from performing my duties as trustee of the said Mosque and Shrine.

The foregoing affidavit was duly read over and explained by me to the withinnamed affirmant in Tamil his own language and he appearing to understand the contents thereof, signed same in my presence at Colombo and was affirmed to on this 19th day of October, 1959.

(Sgd.) I. L. M. THOUFFER.

Before me

(Sgd.) A. V. PUSHPADEVI JOSEPH,
Commissioner of Oaths.

No. 5
Proceedings
before and Order
of the District
Court—
22-10-59

No. 5

Proceedings before and Order of the District Court

22-10-59.

D.C. 837/ZL.

Mr. Navaratnarajah instructed for Plaintiff - Petitioner.

Mr. Navaratnarajah addresses Court in support of the application. He refers to Section 10 and 13 of the Muslim Mosques and Charitable Trusts Act No. 51 of 1956. This has been registered under Section 13. He produces marked "A" a true copy of the Registration. Plaintiff has been appointed Trustee under Section 14. He says that the persons who were acting as trustees before the appointment were the three defendants. He points to Section 14(4) according to which they should hand over all property and documents relating to the mosque to the Trustee. They have not only failed to do so but they have refused to do so and continue to recover and receive collections and offerings and preventing the plaintiff from performing his duties. He points to the affidavit filed.

ORDER

On the submissions made by Counsel and the affidavit filed I am satisfied that this is a case in which an enjoining order under Section 664 should be allowed. Let such an order as prayed for at (a), (b) and (c) of the petition accompany notice of this application to be served on the defendants return-
able on the 6th November 1959.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge.

No. 6
Affidavit of the
3rd Defendant—
5-11-59

No. 6

Affidavit of the 3rd Defendant

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque, and Shrine of 26, 1st Mosque Lane, Colombo.

Plaintiff. 30

Vs.

No. 837/ZL.

1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
2. Abdul Rahman Mohamed Rauff, 14/41, Baptist Chapel Road, Colombo 7.

3. C. M. Shahul Hamid 180/11, Maligawatte Road, Colombo 10.

No. 6
Affidavit of the
3rd Defendant—
5-11-59
—Continued.

Defendants.

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque and Shrine of 26, 1st Mosque Lane, Colombo 12.

Plaintiff - Petitioner.

Vs.

- 1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
- 2. Abdul Rahman Mohamed Rauff, 14/41, Baptist Chapel Road, Colombo 7.
- 3. C. M. Shahul Hamid, 180/11, Maligawatte Road, Colombo 10.

10

1. I, Colonda Marikar Shahul Hamid of 180/11, Maligawatte Road, Colombo 10, being a Muslim do hereby solemnly sincerely and truly declare and affirm as follows :—

1. I am the 3rd Defendant in the above case.

2. Prior to 1956 I had been a Trustee at Dewatagaha Mosque, Baptist Chapel Road, Cinnamon Gardens, Colombo, in D.C. Colombo Case No. 5537. From 1956 to date I have ceased my said Trusteeship on account of my ill health subject to low blood pressure and under treatment from Dr. Kaleel.

3. I am not claiming or demanding or receiving the rents and profits from the movable and immovable properties described in the Schedule in the above case.

4. As per Court order on the 22nd October, 1959, I shall abide to its decision.

5. I have no objection to the issue of an injunction *pendente lite* to the petitioner in the above case.

30 The foregoing affidavit having been duly read and explained by me to the within-named affirmant in Tamil his own language and he appearing to understand the contents thereof, affirmed and signed on 5-11-1959.

(Sgd.) C. M. SHAHUL HAMID.

Before me

(Sgd.)
Commissioner for Oaths.

Proceedings before and Order of the District Court

837/ZL.

6-11-59.

Mr. Wagisa Perera for Plaintiff.

Mr. Advocate V. A. Kandiah with Mr. Advocate Amit for 1st and 2nd defendants instructed by Mr. Zackiya.

Mr. Zackiya files proxy for 1st and 2nd defendants.

Mr. Kandiah says that by a mistake his proctor and he and his junior were in some other Court, as they were under the impression that this case was on the roll of that Court. He moves that the order made allowing the interim injunction be vacated.

Mr. Perera for plaintiff consents. He says however that his instructions are that the respondents are disobeying the enjoining order.

Mr. Kandiah gives an undertaking that the respondents will not in any way disobey the enjoining order that has been served on them. He begs for a date to file objections to the application for an injunction and also for a dissolution of the enjoining order.

Mr. Perera moves that the order be set aside only in respect of the 1st and 2nd defendants as the 3rd respondent has filed an affidavit consenting to the issue of the interim injunction.

20

ORDER

The order allowing an interim injunction against the 1st and 2nd defendants respondents is vacated. They may file their objections on 10-11.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge.

No. 8

Statement of Objections of 1st and 2nd Defendants - Respondents

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek, of 26, 1st Mosque Lane,
 Colombo 12.

30

Plaintiff - Petitioner.

No. 837/ZL.

Vs.

1. N. M. Ishak
2. A. R. M. Rauf and
3. C. M. Shahul Hamid all of Colombo.

Defendants - Respondents.

This 10th day of November, 1959.

No. 8
Statement of
Objections of
1st and 2nd
Defendants-
Respondents -
10-11-59
—Continued.

The Petition or statement of objections of the 1st and 2nd Defendants-Respondents abovenamed appearing by A. A. Khamsus Zackiya, their Proctor states as follows :—

1. The Defendants - Respondents are the lawful trustees of the Dewatagaha Mosque and Shrine ; according to the deed of instrument creating the trust in 1857 only male descendants of Mamina Pullai can be appointed trustees ; the Defendants - Respondents are male descendants of the said Mamina Pullai and have the right to be appointed trustees.
- 10 2. Under and by virtue of awards of Charles Ambrose Lorensz of 29-5-1867 filed in D.C. Colombo 5214 and of E. J. Samarawickrema K.C. in 1922 and filed in D.C. Colombo 49877 the trustees of the Dewatagaha Mosque and Shrine were to be from among the members of the family of M. L. Packeer Tamby, that is the descendants of Mamina Pullai. This method of selection and appointment of trustees have thereafter been accepted by the District Court of Colombo in several actions, the defendants—respondents have been accepted as lawful trustees in several actions and orders in Court.
- 20 3. These Defendants - Respondents are the sole descendants of the said Mamina Pullai are also entitled to be trustees of the said Mosque and Shrine in terms of the trust instrument relating to the Dewatagaha Mosque and Shrine, the religious law and custom of the Muslims, the local custom pertaining to the said Mosque and Shrine, the practice and other arrangements in force at the mosque for over 100 years since the creation of the trust in 1857.
- 30 4. The Petitioner claims to have been appointed trustee from 22-8-59 to 31-12-59, if so the appointment was made illegally, improperly and without jurisdiction. The Board of Wakfs or the Commissioner for Wakfs have no power to remove the Respondents from lawful trusteeship and appoint any other persons.
5. These Defendants - Respondents state that they are the trustees under Section 32 of Act 51 of 1956 and are in lawful possession of the Wakfs or charitable trust created for the benefit of the Dewatagaha Mosque and Shrine and consisting of the immovable properties mentioned in the Schedule to the notices served on these Respondents.
6. These Defendants-Respondents further state that one Cader, who attempted in several actions filed in the District Court of Colombo to oust the respondents as trustees of the said Mosque and Shrine and failed, has been instrumental in filing this application for petitioner to further his own ends.
- 40 7. The Petitioner has no right or power to claim delivery of possession of immovable and movable properties.

No. 8
Statement of
Objections of
1st and 2nd
Defendants-
Respondents—
10-11-59
—Continued.

8. The petitioner has no right in law or otherwise to an order for an injunction *pendente liste*; averments in the petition do not warrant or entitle petitioner for an enjoining order or interim injunction.

9. Wherefore these Defendants-Respondents pray that the enjoining order made at the instance of the Petitioner be discharged or set aside, the application of the petitioner for an interim injunction be dismissed, for costs and for such further and other relief as to this Court shall seem meet.

(Sgd.) A. A. KHAMUS ZACKIYA
*Proctors for 1st and 2nd
Defendants - Respondents.* 10

No. 9
Affidavit of
1st and 2nd
Defendants-
Respondents—
10-11-59

No. 9

Affidavit of 1st and 2nd Defendants - Respondents

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek of 26, 1st Mosque Lane,
Colombo 12.

Plaintiff - Petitioner.

No. 837/ZL.

Vs.

1. N. M. Ishak
 2. A. R. M. Rauff and
 3. C. M. Shahul Hamid all of Colombo. 20
- Defendants - Respondents.*

We, Nilamdeen Mohamed Isak and Abdul Rahuman Mohamed Rauff both of Baptist Chapel Road, Colombo 7, being Muslims do hereby solemnly sincerely and truly declare and affirm as follows :—

1. We are the 1st and 2nd Defendants - Respondents abovenamed.

2. We along with the 3rd Defendant - Respondent are the lawful trustees of the Dewatagaha Mosque and Shrine; according to the Deed of Instrument creating the trust in 1857 only male descendants of Mamina Pullai can be appointed trustees; The Defendants - Respondents are male descendants of the said Mamina Pullai and have the right to be appointed 30 trustees.

3. Under and by virtue of awards of Charles Ambrose Lorensz of 29-5-1867 filed in D.C. Colombo 5214 and of E. J. Samarawickrema K.C. in 1922 and filed in D.C. Colombo 49877 the Trustees of the Dewatagaha Mosque and Shrine were to be from among the members of the family of M. L. Packeer Tamby, that is, the descendants of Mamina Pullai. This method of selection and appointment of trustees have thereafter been accepted by the District Court of Colombo in several actions. We have been accepted as lawful trustees (along with the 3rd Defendant - Respondent) in several actions and orders of Court. 40

4. We are the sole descendants of the said Mamina Pullai are alone entitled to be trustees of the said Mosque and Shrine in terms of the trust instrument relating to the Dewatagaha Mosque and Shrine, the religious law and custom of the Muslims, the local custom pertaining to the said Mosque and Shrine, the practice and other arrangements in force at the Mosque for over 100 years since the creation of the trust in 1857.

No. 9
Affidavit of
1st and 2nd
Defendants-
Respondents—
10-11-59
—Continued.

5. The Petitioner claims to have been appointed trustee from 22-8-59 to 31-12-59 ; if so the appointment was made illegally, improperly and without jurisdiction. The Board of Wakfs or the Commissioner for Wakfs have
10 no power to remove the Respondents from lawful trusteeship and appoint any other persons.

6. These Defendants-Respondents are the trustees under Section 32 of Act 51 of 1956 and are in lawful possession of the Wakfs or Charitable trust created for the benefit of the Dewatagaha Mosque and Shrine and consisting of the immovable properties mentioned in the Schedule to the notice served on these respondents.

7. These Defendants-Respondents further state that one Cader, who attempted in several actions filed in the District Court of Colombo to oust the respondents as trustees of the said Mosque and Shrine and failed, has
20 been instrumental in filing this application for Petitioner to further his own ends.

8. The Petitioner has no right or power to claim delivery of possession of immovable and movable properties and has no right in law or otherwise to an order for an injunction *pendente lite* ; averments in the petition do not warrant or entitle petitioner for an enjoining order or interim injunction.

The foregoing affidavit having
been duly read over and explained
by me to the abovenamed 1st and
2nd Defendants-Respondents in
30 Tamil and they appearing to un-
derstand its contents wrote their
signatures thereto and the same
was duly affirmed to at Colombo
on this 10th day of November,
1959.

(Sgd.) N. M. Ishak

(Sgd.) A. R. M. Rauf.

Before me

(Sgd.)
J.P., U.M.
10-11-59.

No. 10

Proceedings before and Order of the District Court.

28-1-60.

D.C. 837/ZL.

Mr. Advocate Navaratnarajah with Mr. Advocate Nazeem and Mr. Advocate Sinnnetamby instructed for the plaintiff.

Mr. Advocate E. B. Wikramanayake with Mr. Advocate Markani instructed for 1st and 2nd Defendants.

Mr. Wikramanayake takes a preliminary objection. He says that his clients have been appointed trustees and are in fact acting as such. The plaintiff wants the defendants removed from the premises. The respondents¹⁰ are in actual possession of the movable and immovable property and always have been. He points to para 6 of the plaintiff's petition. Whether the plaintiff is the rightful trustee or not is the question to be decided in the case itself. He would not argue that matter at this stage but submits that no injunction is available to remove a person who is in possession and place someone else there. He cites 40 N.L.R. page 23. The Court cannot order the plaintiff be placed in possession until he gets a decree. If the defendants are removed there will be no one to manage the affairs of the mosque.

Mr. Wikramanayake says that the original trust itself provided that the trust should descend from father to son and there have been several²⁰ awards by Court in favour of his clients and his predecessors. The first and second Defendants have been in possession of these premises for the last 15 years. Mr. Wikramanayake says that under the new Act 51 of 1956 it would appear that the plaintiff has been appointed trustee according to his deeds by the Board. He points to Section 14(1) (a) of the Act where the Board is bound in making appointments to take into consideration the terms of a trust instrument. This is a matter that he will be urging at the trial. As far as the present application is concerned he says that he cannot be ousted by means of an injunction.

The plaintiffs have asked for an accounting and whether the defendant³⁰ remains there or not if plaintiff succeeds the defendant will be bound to render an accounting during the term he is in possession. An interim injunction is an equitable remedy and a permanent injunction is a legal remedy.

Mr. Navaratnarajah addressed Court. He says that he is asking for an injunction restraining the defendants from receiving rents from the movable and immovable properties and collecting offerings and otherwise preventing plaintiff from exercising his rights. He points to Section 14(4) of Act 51 of 1956. Mr. Navaratnarajah submits that even though it may be certain that the right to collect rents from the immovable properties flows from his possession yet the right to collect offerings does not. Mr. Navaratnarajah⁴⁰ submits that Mr. Wikramanayake's contention is correct as far as the rent from the immovable property is concerned, but the collecting of offerings is different.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge.

Later

Mr. Navaratnarajah states that his instructions are that the plaintiff has since taken forcible possession.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge.

No. 10
Proceedings
before and Order
of the District
Court—
28-1-60
and
29-1-60
—*Continued.*

ORDER

The plaintiff claims to have been duly appointed as trustee of the Dewatagaha Mosque on 22-8-59. This claim is disputed by the 1st and 2nd Defendants.

10 In the present application plaintiff asks for an interim injunction restraining the defendants from—

(a) demanding or receiving the rents and profits from the immovable and movable property described in the Schedule to the plaint ;

(b) from demanding or receiving or collecting the offerings and contributions to the said Mosque and Shrine ;

(c) from preventing or otherwise hindering the petitioner from performing his duties as trustee of the said Mosque and Shrine.

Mr. Wikramanayake for the defendants takes a preliminary objection that the Court has no power to grant an injunction whereby a defendant
20 who is in possession could be removed and the plaintiff placed in possession.

In the case reported in 40 N.L.R. page 73, Koch J. dealing with Section 87 of the Courts Ordinance (now Section 86) under which injunctions are granted stated ;

“ I can see nothing in the Section that empowers a Court to remove a defendant from the possession of subject matter of an action and to place the plaintiff in possession instead, pending the result of the action. ”

and further down in the same judgment—

30 “ It is a common occurrence in Ceylon for a person unlawfully to enter upon land and turn out the party in possession. Such acts have led to innumerable actions for declaration of title and ejectment by parties so dispossessed and though in such actions it is sometimes asked, and rightly too, that the defendant be restrained from committing wasteful acts on the land pending final determination of title, no decision has been cited to us—and as far as I am aware there is no such decision—in which under such circumstances the plaintiff was able to be placed in possession pending trial by means of an interim injunction. The reason no doubt is that the law will not permit such a proceeding ”

No. 10
 Proceedings
 before and Order
 of the District
 Court—
 28-1-60
 and
 29-1-60
 —Continued.

Mr. Navaratnarajah mentioned to me after the argument that his instructions were that the plaintiff had since taken forcible possession — but the rights of the parties have to be determined as at the time of the application. In the plaint the plaintiff prayed *inter alia* —

- (a) for an order requiring the defendants to deliver to him the movable and immovable property described in the Schedule to the plaint ;
- (b) for an order directing the defendants to be ejected from the Mosque and Shrine ;
- (c) for an order directing the defendants to be ejected from the immovable property mentioned above, and 10
- (d) for an order directing the defendants to render a true and correct account of the rents, profits, offerings and contributions taken by them. There can be no doubt that the defendants were the persons in possession. The present application was filed by way of petition and affidavit on the same day as the plaint.

Mr. Navaratnarajah also submitted that Mr. Wikramanayake's submission would apply to the receiving of rents and profits from the immovable and movable property, but not to the collecting of offerings and contributions or the preventing or hindering the petitioner from performing his duties. But a difference is hardly distinguishable, for these matters too are intimately bound with the defendant's possession of the premises. In fact, in para 6 of the petition the plaintiff said that " the respondents are now in the wrongful possession of the movable and immovable property of the said Mosque and Shrine and are wrongfully collecting and appropriating the rents and profits and also the offerings and contributions " They also stated in the same para that " the respondents are in the wrongful possession of the Mosque and Shrine and have THUS prevented and are preventing and hindering the petitioner from performing his duties "

So that the present application is really one to remove the defendants and place the plaintiff in possession of the subject matter of the action, before the action itself is decided. 30

I do not think that the plaintiff is entitled to such relief.

The application for an injunction is refused with costs, and the enjoining order would of course cease to be operative.

According to the Fiscal's return the 1st Defendant has been served with summons, and there is no return to the summons issued on the 2nd Defendant. But as Mr. Zackiya has filed proxy for both these defendants he should file their answer on 29-2-60. Summons on the 3rd has been returned unserved and should be re-issued on him returnable on the same date.

(Sgd.) A. L. S. SIRIMANE, 40
Additional District Judge.

Delivered in Open Court.

(Sgd.) A. L. S. SIRIMANE,
 29-1-60.

No. 11

No. 11
 Answer of
 1st and 2nd
 Defendants—
 29-2-60

Answer of 1st and 2nd Defendants

IN THE DISTRICT COURT OF COLOMBO.

I. L. M. Thoufeek of 26, 1st Mosque Lane,
 Colombo 12.

Plaintiff.

No. 837/ZL

Vs.

1. N. M. Ishak of Baptist Chapel Road, Colombo 7.
- 10 2. Abdul Rahaman Mohamed Rauff of Baptist Chapel Road, Colombo 7.
3. C. M. Shahul Hamid of 180/11, Maligawatta Colombo 10.

Defendants.

On this 29th day of February, 1960.

The answer of the 1st and 2nd Defendants appearing by their Proctor A. A. Khamsus Zackiya, states as follows :—

1. These defendants admit the averments in paragraph 1 of the plaint.
2. These defendants are unaware of the truth of the averments in
 20 paragraph 2 and put the plaintiff to the proof thereof.
3. Answering to paragraph 3 the defendants specially deny that the plaintiff was duly appointed Trustee of the said Mosque or that the Defendants ceased to be Trustees thereof from 22nd August, 1959 or any other date.
4. The defendants accordingly deny the averments in the rest of the plaint.
5. Further answering to the plaint these defendants state that by the Deed of Trust executed in 1857 one Mamina Pullai was appointed Trustee of the said mosque and the said deed provided that the trusteeship should descend to the male descendants of the said Mamina Pullai.
- 30 6. Under and by virtue of Awards of Mr. C. A. Lorensz of 29th May, 1867 filed in case No. 5214 of this Court and of Mr. E. J. Samarawickreme K.C. in 1922 filed in D.C. Colombo 49877 the Trustees of the said mosque were to be chosen from the family of Mr. M. L. Pakeer Thamby, a descendant of the said Mamina Pullai. This method of selection of the Trustee has been accepted by this Court in several cases. The defendants who are members of the said family and male descendants of the said Mamina Pullai have officiated as Trustees for the last 15 years and have been accepted as Trustees in several actions of this Court.

No. 11
Answer of
1st and 2nd
Defendants—
29-2-60
—Continued.

7. These defendants state that in terms of the said Deed of Trust the religious law and custom of the Muslims, the local custom pertaining to the said mosque and the practice in force in the said mosque these defendants are the lawful Trustees of the said mosque.

8. These defendants accordingly state that the appointment of the Plaintiff, if any, is illegal and void and gives no right to the Plaintiff for the removal of these defendants from the trusteeship of the said mosque.

WHEREFORE these defendants pray :—

- (1) That plaintiff's action be dismissed and in reconvention ;
- (2) That these defendants be declared the Trustees of the said mosque 10 and entitled to the movable and immovable properties thereof ;
- (3) For costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) A. A. KHAMSUS ZACKIYA
Proctor for 1st & 2nd Defendants.

Settled by :

E. B. WIKRAMANAYAKE Q.C.,
M. MARKANI
Advocates.

No. 12

20

Affidavit of the Plaintiff—Petitioner

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque and Shrine, 1st Mosque Lane, Colombo.

Plaintiff.

No. 837/ZL

Vs.

1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
2. Abdul Rahman Mohamed Rauff, 14/41, Baptist Chapel 30 Road, Colombo 7.

Defendants.

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque and Shrine of 26, Mosque Lane, Colombo 12.

Plaintiff - Petitioner.

Vs.

1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
2. Abdul Rahman Mohamed Rauff, 14/41, Baptist Chapel Road, Colombo 7. 40

Defendants - Respondents.

No. 12
Affidavit of the
Plaintiff-
Petitioner—
30-4-60

I, I. L. M. Thoufeek, Trustee of Dewatagaha Mosque and Shrine of 26, 1st Mosque Lane, Colombo 12, do hereby solemnly sincerely and truly declare and affirm as follows :—

No. 12
Affidavit of the
Plaintiff-
Petitioner—
30-4-60
—Continued.

1. I am the Petitioner abovenamed.
2. I am the Plaintiff in case No. 837/ZL. of the District Court of Colombo.
3. I was appointed Trustee of the Mosque and Shrine referred to in the said case by the Commissioner of Wakfs appointed under the provisions of the Muslim Mosque and Charitable Trusts of Wakfs Act No. 51 of 1956.
- 10 4. I instituted the above action by virtue of the appointment made by the Commissioner of Wakfs as I was vested with the movable and immovable property of the said Mosque and Shrine together with rents profits offerings contributors made for the use and benefit of or for the performance of religious ceremonies at the said Mosque.
5. I made application for an interim injunction which was fixed for inquiry.
6. At the inquiry my application was dismissed with costs.
7. The Respondents abovenamed have taxed the bill of costs and made application for execution of writ which application has been allowed.
- 20 8. I submit that the property belonging to me personally is not liable for execution in as much as I sued the Respondents under the Section 25(1) of Act 51 of 1956.
9. The action was filed *bona fide* in the exercise of the powers and performance of duties as trustee of the mosque which was registered under the provisions of the said Act.
10. I submit that the terms of application for execution is repugnant to the provisions of Section 25(2) of the said Act. The respondents' remedy does not lie against the property which belong to me in my private capacity.

30 Read over signed and affirmed to }
 at Colombo on this 30th day of } (Sgd.) I. L. M. THOUFEEK
 April, 1960. }

Before me

(Sgd.)
Commissioner for Oaths.

No. 13

Petition of the Plaintiff - Petitioner

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque and Shrine of 26, 1st Mosque Lane, Colombo 12.

Plaintiff.

No. 837/ZL

Vs.

1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
2. Abdul Rahman Mohamed Rauff, 14/41, Baptist Chapel Road, Colombo 7.

10

Defendants.

I. L. M. Thoufeek, Trustee of Dewatagaha Mosque and Shrine of 26, 1st Mosque Lane, Colombo 12.

Plaintiff - Petitioner.

Vs.

1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo.
2. Abdul Rahman Mohamed Rauff, 14/41, Baptist Chapel Road, Colombo 7.

20

Defendants - Respondents.

On this 24th day of June, 1960.

The Petition of the Petitioner abovenamed appearing by M. Wagisa Perera states as follows :—

1. The Petitioner is plaintiff in case No. 837/ZL of the District Court of Colombo.

2. The Petitioner was appointed Trustee of the Mosque and Shrine referred to in the said case by the Commissioner of Wakfs appointed under the provisions of the Muslim Mosque and Charitable Trusts of Wakf Act No. 51 of 1956.

3. The petitioner instituted the above action by virtue of the appointment made by the Commissioner of Wakfs as the petitioner was vested with the movable and immovable property of the said Mosque and Shrine together with rents profits offerings contributions made for the use and benefit of or for the performance of religious ceremonies at the said Mosque.

No. 13
Petition of the
Plaintiff-
Petitioner—
24-6-60
—Continued.

4. The Petitioner made application for an interim injunction which was fixed for inquiry.

5. At the inquiry the Petitioner's application was dismissed with costs.

10 6. The respondents abovenamed have taxed the bill of costs and made application for execution of writ which application has been allowed.

7. The Petitioner submits that the property belonging to Petitioner personally is not liable for execution in as much as the petitioner sued the Respondents under Section 25(i) of Act. 51 of 1956.

8. The action was filed *bona fide* in the exercise of the powers and performance of duties as trustee of the Mosque which was registered under the provisions of the said Act.

20 9. The petitioner submits that the terms of application for execution is repugnant to the provisions of Section 25(2) of the said Act. The Respondents' remedy does not lie against the property which belong to the petitioner in his private capacity.

WHEREFORE Petitioner prays that the Court be pleased to make order.

- (i) recalling the writ of execution
- (ii) make order that the Petitioner is not personally liable to pay costs from his private funds or property
- (iii) for costs ;
- (iv) for such other and further relief as to this Court shall seem meet.

Issues Framed

837/ZL

15-2-61.

Mr. Advocate P. Navaratnarajah with Advocates Nazeem and Sinnethamby for Plaintiff instructed by Mr. M. W. Perera.

Mr. Advocate E. B. Wikramanayake Q.C., with Advocate Markhani for 1st and 2nd defendants instructed by Mr. Zackiya.

Mr. Navaratnarajah opens his case. He says that the 1st, 2nd and 3rd defendants were, prior to 22nd August, 1959, admittedly the Trustees of the Dewatagaha Mosque. The 1st defendant, for and on behalf of himself and the other defendants, made an application under Section 10(1) of the Muslim Mosques & Charitable Trusts and Wakfs Act, that this mosque be registered. That application was made on the 26th October, 1957. The application was made and under Section 13 of the same Act this Mosque was duly registered. This Mosque was registered on 22nd August, 1959, and thereafter under Section 14(1) the plaintiff was appointed the Trustee. The next Section is 14(4). His submission is that under Section 14(4) the three defendants who were the Trustees prior to 22nd August, 1959, were under obligation to hand over to the plaintiff who had been duly appointed Trustee all the properties and documents relating to the mosque. The defendants refused to hand over the properties. The plaintiff then obtained an injunction restraining the defendants from doing certain acts, and the plaintiffs were in possession of the Mosque from 19th November, 1959 to 29th January, 1960. They had to give up possession because the injunction was dissolved. He now comes into Court under Section 25 of the same Act.

Mr. Navaratnarajah says the defendants position appears to be that they have been appointed Trustees under a certain deed executed in 1857, and that therefore the appointment by the Board, appointing the plaintiff as the Trustee is an illegal appointment.

Mr. Navaratnarajah raises the following issues ;

1. Is the Dewatagaha Mosque duly registered under the provisions of the Muslim Mosques and Charitable Trusts and Wakfs Act No. 51 of 1956.
2. (a) Was the plaintiff appointed Trustee of the said Mosque under the said Act as and from the 22nd August, 1959.
- (b) Is the plaintiff the Trustee of the said Mosque under and in terms of the said Act.

- No. 14
Issues Framed
---Continued.
3. Were the defendants the Trustees of the said Mosque prior to the 22nd August, 1959.
 4. Did the movable and immovable properties of the said mosque and Shrine described in the Schedule to the plaint together with the rents and profits and contributions vest in the plaintiff as from 22nd August, 1959.
 5. Are the defendants in wrongful possession of the movable and immovable properties of the said Mosque, and wrongfully appropriate to themselves the offerings and contributions to the said Mosque.
 6. What is the rent and profits from the said movable and immovable properties per month.
 7. What are the offerings and contributions per month of the said mosque.
 8. If issues 1 - 5 are answered in favour of the plaintiffs are the plaintiffs entitled to the relief claimed in the plaint.

10

Mr. Wikramanayake has no objection to the issues.

I accept them.

Mr. Wikramanayake suggests the following issues :

20

9. Was one Mamina Pullai appointed the Trustee of the said Mosque by Deed of Trust executed in 1857.
10. Did the said deed provide that the Trusteeship should descend to the male descendants of the said Mamina Pullai.
11. Are the defendants the male descendants of the said Mamina Pullai.
12. Are the defendants the lawful trustees of the said Mosque in terms of the said deed of trust, religious law and customs of the Muslims local customs pertaining to the said Mosque and the practice in force in the said Mosque.
13. Is the appointment of the plaintiff illegal and void.
14. If so, does it give the plaintiff any right to the removal of the defendants from the Trusteeship of the said Mosque.
15. Are the premises described in the plaint or any part of them the property of the said Mosque.

30

I accept the issues.

Plaintiff's Evidence

Plaintiff's Case

Mr. Navaratnarajah calls :—

Thambimuttu Thurairatnam : Affirmed, 38 years, Administrative Assistant, Department of Mosques and Muslim Charitable Trusts, Colombo.

I have brought to Court the files relating to the Dewatagaha Mosque. I produce marked P1 the application made by the 1st defendant dated 26th October, 1957, requesting the Commissioner to register the Dewatagaha Mosque under Act 51 of 1956. I also produce marked P1A the particulars furnished by the 1st defendant in regard to the Dewatagaha Mosque. In Item 3 of P1A the 1st defendant has set out the properties belonging to the said trust. 10

- Q. But the Commissioner for Mosques and Muslim Charitable Trust called for applications from Muslims desirous of being considered as trustees for the Dewatagaha Mosque ?
- A. Before that a series of inquiries were held, and after that the Board decided to publish a notice in the papers calling for applications. I produce the notice marked P2. On the 22nd August, 1959 the Board decided to register the said Mosque. I produce a certified copy of the proceedings of the Board on the 22nd August, 1959 marked P3. On the same date the Board appointed the plaintiff as the Trustee of the said Mosque until the 31st December, 1959 in the first instance. Plaintiff's appointment was extended to December, 1960 thereafter, and now it has been extended to 31st December, 1961. I produce marked P4 a certified extract from the register of the Mosque. P4 sets out in column 7 the properties of the Mosque. It also sets out the name of the trustee as namely the plaintiff, and in the last column 13 it sets out that the plaintiff was re-appointed from 1-1-61 to 31-12-61. I produce also marked P5 a letter of appointment in which it is stated that the Mosque has been registered and the plaintiff has been appointed Trustee. I produce marked P6 a letter dated 27th August, 1959 sent by the Commissioner to the defendants informing them that the plaintiff had been appointed Trustee and directing them to hand over all the properties to the plaintiff. 20 30

(Mr. Wikramanayake objects to P6 on the ground that he has not been noticed to produce the original. I uphold the objection. P6 is ruled out.)

I produce marked P6 the decision of the Board on the 5th September, 1959 giving permission to the plaintiff to sue the defendants for the recovery of the properties and for other consequences. I produce marked P7 the evidence given by the 1st defendant on 16th May 1959 at the inquiry held by the Board. I produce marked P8 the evidence given by the 1st defendant on 30th May, 1959, and P9 the evidence of Rauf given on the 30th May, 1959 at the inquiry held by the Board. 40

Cross-examinationNo. 15
Plaintiff's
EvidenceEvidence of
T. Thurairatnam—
Cross-examination

I have no personal knowledge of this Mosque. (Shown a document).

Q. You sent application forms to various people for the appointment?

A. This is a copy of the notice that was published in the papers.
(The document is marked D1).

One of the particulars called for there is relationship to Mamina Pullai. He was the original founder of the Mosque. I also know that according to the trust deed the trusteeship should descend to the male descendants of Mamina Pullai. I also know that the present defendants are the male descendants
10 of Mamina Pullai. The plaintiff is not a descendant of Mamina Pullai.

(Mr. Navaratnarajah says that Section 14 makes it obligatory on the Board to give a Trust deed. His submission is that the Board has the discretion under Section 14, but should consider various matters.)

(Shown marked D2 a certified copy of the minutes of the proceedings of the Board, certified by this witness.)

On the 30th May, 1959, Mr. Markhani has appeared for the defendants. He stated that these properties were not properties belonging to the mosque but part of the family trust. That is the property described in the Schedule
20 to the plaint. The mosque is a place of worship. Wakfs is a Charitable trust.

Re-examination : Nil

(Sgd.) O. L. de KRETZER,
Additional District Judge.

Ibrahim Lebbe Mohammed Thoufeek : Affirmed, 48 — Hotel Keeper, No. 248, New Moor Street, Colombo.

Evidence of
I. L. M. Thowfeek—
Examination.

I am the plaintiff. I was appointed Trustee of this Mosque on the 22nd August 1959. Prior to that date the defendants were the trustees. The defendants did not give me possession of the mosque. They did not give
30 me possession of the immovable properties belonging to the trust. The immovable properties belonging to the Trust are set out in the Schedule to the plaint. I made an application to the Board for permission to sue the defendants and permission was given to me. Thereafter I filed this action. I obtained an interim injunction and was in possession of the mosque from 19th November, 1959 till about the end of January, 1960. During the period I was in possession of the mosque I was not able to collect the rents from the immovable properties, but I was able to collect the offerings etc. that were given to the mosque. The offerings I got amounted roughly to about Rs. 3,000/- a month. The rent of the immovable premises is roughly about Rs. 800/-. From
40 January, 1960 the defendants are in possession of the mosque, and they are receiving the rents and profits from these immovable properties, and also appropriating to themselves the offerings received by them. I have been appointed Trustee till 31st December, 1961 and I pray for the relief claimed in the plaint.

Cross-examination :

I have known this mosque from my boyhood — from the time I started attending the mosque. I am 48 years old now. I know the defendants have been trustees of this Mosque. I don't know whether their ancestors have been trustees before them. I don't know who were the trustees before these defendants. I am now aware that Ghaus' father was the trustee before him.

Q. Why did you want to be trustee ?

A. On days when I went to the mosque I found the mosque neglected and in a dirty condition and I desired that I should do some service for the mosque and improve the same with the income. 10

I know Abdul Cader well. I don't know whether he has been trying to be trustee of this mosque for a long time. I don't know whether he is a reconvicted criminal.

If you have documents it can be proved. I don't know whether he has been charged with murder. I have known him for about 10 years. I am not aware of his convictions. When I was appointed trustee the Board of Trustees informed the Police that they should give me assistance. I knew I was going to have trouble then. The premises adjoining the mosques are tenements. They are occupied by tenants. 20

Re-examination — Nil

(Sgd.) O. L. de KRETZER,
Additional District Judge.

Plaintiffs' case closed reading in evidence P1 — P9.

Mr. Wikramanayake for the defendants calls no evidence.

He closes his case reading in evidence D1 and D2.

No. 16

Addresses to Court

Mr. Wikramanayake addresses Court. He says the plaintiffs claim to be the duly appointed trustees of the Dewatagaha Mosque, and seek legal possession to certain properties described in the Schedule to the plaint. His submission is that there is no proof that he is the duly appointed trustee and that these properties belonged to the mosque and that he is entitled to them. With regard to the appointment of trustees, he says that though the plaintiff had a letter of appointment, his appointment is highly irregular and void. Act 51 of 1956 was passed to give control of the mosque to some parties, but not disturb the existence of the trustee of the mosque. Section 14 expressly provides that in considering who should be appointed trustee 30

the Board shall have regard to the deed of trust. It is admitted that the Dewatagaha Mosque was founded by Mamina Pullai. In D1 one of the questions asked is the relationship of the applicant with Mumina Pullai, which admits that Mamina Pullai founded this Mosque and the devolution of the trusteeship was through the male descendants. It is admitted that the defendants are the male descendants of Mamina Pullai. The Board of Trustees has no discretion in the matter, they must give effect to it. The Board cannot say that a person is fit or not; they must give valid reasons to say a person is not fit. The statute says that they shall have regard to the instrument of trust. They must give effect to that. The descent has always been in the male line of Mamina Pullai. The Board had no discretion in the matter. Alternatively, if they have a discretion they have not correctly exercised that. This mosque was registered on 22nd August, 1959. Section 14 says that "so soon after as possible after the registration the Board shall consider the appointment of trustees." It contemplated the registering of the mosque, calling for applications for trustee, considering them, and making an appointment.

No. 16
Addresses to
Court
-- Continued.

Mr. Wikramanayake refers to D2. The registration of the Mosque was on 22nd August 1959. In January 1959 they decided to call the *de facto* trustees for an interview. On the 2nd May they were called for an inquiry and on 16th May, 30th and 31st July they gave evidence. There is nothing in the document to show what this evidence was. On the 1st August the board decided to call for applications for the post of Trustee. Having heard all the evidence from January to May, on the 1st August they decided to call for applications. On the 15th August having called for applications they decided to summon Makeen and Thoufeek for an interview. Even before the inquiry he submits they had decided not to appoint the descendants of Mamina Pullai as trustees. In that evidence they merely set out their claim. His submission is that assuming that the Board had a discretion, that discretion must be exercised. There must be sufficient evidence before a Court to find out that although there is the trust deed, the reason why the defendants should not be appointed should be strong that it justifies their not being appointed. So far as this Court is concerned there is not a scrap of evidence to justify their not being appointed. Although the statute says that "after the registration of the mosque they shall call for applications", they had already decided before the registration of the mosque that these people should not be appointed. There is nothing in the evidence to show any *bona fide* reason or justification for not registering the legal claims of the defendants to being appointed. Just because the Board does not like these defendants is not sufficient reason for not considering their suitability. There is no reason whatever to show why these people have not been selected. The board has had no discretion at all. The terms of the statute are imperative. If the board had a discretion that discretion had not been exercised *bona fide*.

He says that the burden is on the plaintiff to prove that the premises described in the Schedule to the plaint are premises belonging to the mosque. The fact that it is part of a religious trust does not mean that it is part of the trust. The mosque is a place of worship only, and the plaintiff must prove that the premises is part of the mosque.

Mr. Navaratnarajah addresses Court. He submits that Section 14 gives a discretion to the Board in the appointment of a trustee. Section 14 only requires that the Board before making an appointment should have regard to certain matters. Mr. Wikramanayake argues that the decision to appoint the plaintiff as trustee was made prior to the 22nd August 1959 ; that is not supported by the documents produced. Certain evidence had been recorded prior to 22nd August 1959.

That evidence was for the purpose of deciding as to whether or not the mosque had to be registered. On the 22nd August 1959 the decision reads as follows " The Board decided to register this Mosque and Shrine ... " 10 The Board then considered the applications of four persons and Messrs. Ishak, Rauf and Abdul Cader. After having decided to register it they decided to consider the applications of seven people. Although the Board was of opinion that preferably a descendant of Mamina Pullai should be the trustee, they interviewed the defendants and came to the view that they were unsuitable, therefore the Board decided to appoint the plaintiff. This decision shows that the Board had considered the terms of the previous trust, and the terms of the previous trust say " preferably a descendant of Mamina Pullai should be appointed trustee " He submits that Counsel for the defendants has not marked in evidence the deed of trust referred to in 20 the answer. His submission is that the appointment is a perfectly valid appointment.

Plaintiff is asking for the following, that he be placed in possession of the mosque.

If the Court holds that plaintiffs have been appointed trustees, legally the plaintiffs have a right to be placed in possession of the mosque. He submits that Counsel for the defendants contends that plaintiffs have not proved that certain tenements which have been described in the plaint belong to the trust. He relies firstly on the document P1A where property belonging to the mosque has been set out by 1st defendant. He also relies 30 on the evidence by Ishak in P7 and P9 the evidence of the 2nd defendant wherein he has referred to the properties. He relies on the documents P4 where the properties are set out. There is no evidence led by the defendants to contradict this. He submits that the plaintiff is entitled to an order as prayed for.

Mr. Navaratnarajah says that in the Schedule he has given a number of various premises, but he has not yet checked it together with all the items. It may be that one or two items may be different.

He asks that the defendants be required to deliver possession of the immovable properties and movable properties and that they be ejected from 40 the mosque and the plaintiff placed in possession, for an order directing the defendants to be ejected from the premises, for an accounting and for a permanent injunction.

Judgment on 6-3-61.

(Sgd.) O. L. de KRETZER,
Additional District Judge.

Judgment of the District Court

837/ZL

JUDGMENT

The 1st, 2nd and 3rd defendants were, prior to the 22nd August, 1959, the Trustees of the Dewatagaha Mosque. The 1st defendant, on behalf of himself and the other defendants, made an application under Section 10(1) of the Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956 that the Trust should be registered. In terms of Section 13 of the same Act
10 the mosque was registered on the 22nd August, 1959 and then the Board, in terms of Section 14 (1), appointed the plaintiff in this case as the Trustee.

The defendants have refused to hand over to the plaintiff the property and documents relating to the Mosque and Shrine as they should have done in terms of Section 14(4), and their reasons for doing so are that they should have been appointed Trustees in view of the fact that the founder of the Trust Mamina Pullai had in 1857 when he created the Trust provided that the Trusteeship should descend to his male descendants — that the defendants are the male descendants of Mamina Pullai is not in dispute.

It is also an admitted fact that the plaintiff is not a descendant of Mami-
20 na Pullai.

In terms of Section 14(1) in selecting a person for appointment as Trustee the Board had to have regard to the following matters :—

- (a) The terms of any Trust instrument relating to the Mosque ;
- (b) The religious law and customs of the sect of the Muslim community concerned ;
- (c) The local customs with reference to that Mosque ; and
- (d) The practice and other arrangements in force for the administration of the Mosque.

The proceedings of the 22nd August, 1959 produced as P3 show that the
30 Board had considered the terms of the Trust instrument and the other matters in terms of Section 14(1) before they made the appointment. The Trust Deed in question has not been produced in evidence, and there is nothing to indicate that the position set out by the Board that the terms of the previous award and the documents relating to the mosque indicated that preferably a descendant or descendants of Mamina Pullai should be Trustees was a wrong view.

The proceedings of the 22nd August 1959 show that the Board had, after interviewing the applicants who were descendants of Mamina Pullai, namely these defendants, came to the conclusion that they were unsuitable

for appointment. I can see nothing in the documents that have been produced before me to show that that was not an opinion honestly formed. No attempt has been made to call the members of the Board and cross-examine them on the footing that their decision was arrived at dishonestly. It has been submitted that the Board should have given reasons as to why they did not appoint the descendants of Mamina Pullai. But a perusal of the proceedings of 22nd August, 1959 (P3) show that they have given a very cogent reason for not appointing them *viz.* that they found them unsuitable. I do not think that there is any obligation on the part of the Board to go further and give reasons in detail as to why they found them unsuitable. As I said, if the suggestion is that they have acted dishonestly, then I would expect that they would be called and cross-examined on that footing. In my opinion, Section 14 clearly gives the Board of Trustees, a discretion as to who should be appointed a Trustee, and for their guidance in the exercise of that discretion there are laid down sub-paras (a), (b), (c) and (d) of Section 14(1) which are matters they would take into consideration in making the appointment. I am quite unable to hold that they have not taken these matters into consideration in making the appointment.

I do not think that there is substance in the submission that a decision to appoint the plaintiff as Trustee was made prior to the 22nd August, 1959. The documents which have been produced certainly do not bear out that view. In my opinion therefore the Board has acted correctly in appointing the plaintiff as the Trustee of this mosque.

The issue has been raised also whether the premises described in the plaint or any part of them are the property of the mosque. In view of the documents P1(a) where the property belonging to the mosque has been set out by the 1st defendant, the evidence in P7 and P9 of the 2nd defendant, and the document P4 where the properties are set out, it appears to me that the properties set out in the Schedule to the plaint are the property of the mosque.

33

In the result, I answer the issues as follows :—

1. Yes.
2. (a) Yes.
(b) Yes.
3. Yes.
4. Yes.
5. Yes.
- 6 & 7. The answer to these issues would have to depend on an accounting.
8. Yes.
9. In the absence of the Deed of Trust it is not possible to answer this question.
10. In the absence of the Deed of Trust it is not possible to answer this question.
11. Yes.
12. No.
13. No.
14. Does not arise.
15. Yes.

40

In the result, I give judgment for the plaintiff as prayed for with costs.

(Sgd.) O. L. de KRETSER,
Additional District Judge.
13-3-61.

No. 17
Judgment of the
District Court—
13-3-61
—Continued.

Delivered in Open Court, in presence of parties and proctors.

(Sgd.) O. L. de KRETSER,
Additional District Judge.
13-3-61.

No. 18

Decree of the District Court

No. 18
Decree of the
District Court —
13-3-61

10

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek, Trustee of Dewatagaha
Mosque and Shrine of 26, 1st Mosque Lane,
Colombo 12.

Plaintiff.

No. 837/ZL

Vs.

1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
2. Abdul Rahaman Mohamed Rauff of 14/41, Baptist Chapel Road, Colombo 7.
3. C. M. Shahul Hamid of 180/11, Maligawatte Road, Colombo 10.

Defendants.

This action coming on for final disposal before O. L. De Kretser Esqr., Additional District Judge of Colombo on the 13th day of March, 1961 in the presence of Mr. M. Wagisa Perera on the part of the Plaintiff and Mr. A. A. K. Zackiya on the part of the Defendant ;

30

- (a) It is ordered and decreed that the Defendants do deliver to the Plaintiff all that land and premises called and known as Dewatagaha Mosque and Shrine and premises Nos. 14, 12, 8, 10, 10A, 10C, 16, 16A, 16B, 18, 3, 5, 7, 9, 14/2, 14/2A, 14/3, 14/4, 14/5, 14/6, 14/8 and 14/9 situated at Baptist Chapel Road Cinnamon Gardens within the Municipality of Colombo and bounded on the North by Baptist Chapel, East by Baptist Chapel Road, West and South by the Colombo Municipal Office.
- (b) It is further ordered and decreed that the Defendants be ejected from the said Mosque and Shrine and that Plaintiff be placed in possession thereof.

No. 18
Decree of the
District Court —
13-3-61
—Continued.

- (c) It is further ordered and decreed that the Defendants be ejected from all that land and premises called and known as Dewatagaha Mosque and Shrine and premises Nos. 14, 12, 8, 10, 10A, 10/C, 16, 16/A, 16/B, 18, 3, 5, 7, 9, 14/2, 14/2A, 14/3, 14/4, 14/5, 14/6, 14/8 and 14/9 situated at Baptist Chapel Road, Cinnamon Gardens within the Municipality of Colombo and bounded on the North by Baptist Chapel, East by Baptist Chapel Road, West and South by the Colombo Municipal Office and that Plaintiff be placed in possession thereof.
- (d) It is further ordered and decreed that the Defendants do render a true and correct account of rents and profits received by them and also of the offerings and contributions received and collected by them and do pay to the Plaintiff the amount found due on such an account being taken.
- (e) It is further ordered and decreed that the Defendants and their servants and agents be restrained and they are hereby restrained from (i) demanding or receiving the rents and profits from all that land and premises called and known as Dewatagaha Mosque and Shrine and premises Nos. 14, 12, 8, 10, 10/A, 10/C, 16, 16/A, 16/B, 18, 3, 5, 7, 9, 14/2, 14/2A, 14/3, 14/4, 14/5, 14/6, 14/8 and 14/9 situated at Baptist Chapel Road, Cinnamon Gardens within the Municipality of Colombo, (ii) from demanding or receiving or collecting the offerings and contributions to the said Mosque and Shrine (iii) from preventing or otherwise hindering the Plaintiff from performing his duties as trustee of the said Mosque and Shrine.

And it is further ordered and decreed that the said Defendants do pay to the said Plaintiff his costs of this action as taxed by the Officer of the Court.

Colombo this 13th day of March, 1961.

30

(Sgd.) O. L. DE KRETZER.
Additional District Judge.
Colombo.
14-3-61.

Drawn by me.

(Sgd.) M. WAGISA PERERA.

Proctor for Plaintiff.

13th day of March, 1961.

Petition of Appeal to the Supreme Court

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.

1. N. M. Ishak of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.

S. C. 146 (F)
1961

2. A. R. M. Rauff of 14/4, Baptist Chapel Road, Colombo 7.

10 D. C. Colombo.
Case No. 837/ZL.

Defendant—Appellants.

Vs.

1. I. L. M. Thoufeek of 26, 1st Mosque Lane, Colombo 12.

Plaintiff—Respondent.

2. C. M. Shahul Hamid of 180/11, Maligawatte Road, Colombo 10.

Defendant—Respondent.

On this 13th day of March 1961.

20 *To :*

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Petition of Appeal of the Defendant - Appellants abovenamed appearing by A. A. Khamsus Zackiya, their Proctor, states as follows :—

1. The Plaintiff - Respondent instituted this action on 22nd October, 1959, alleging that he was appointed the sole trustee of the Dewatagaha Mosque and Shrine, against the Defendant-Appellants and Defendant - Respondent and for orders.

- 30 (a) Requiring them to deliver to Plaintiff - Respondent the movable and immovable property described in the Schedule of the plaint and the documents relating thereto ;
- (b) Directing the Defendants to be ejected from the said Mosque and Shrine and that Plaintiff - Respondent be placed in possession thereof ;
- (c) Directing the Defendants to render accounts ; and
- (d) For permanent injunction restraining the Defendants (1) receiving rents and offerings and (2) hindering plaintiff - respondent performing duties as trustee.

No. 19
 Petition of
 Appeal to the
 Supreme Court—
 13-3-61
 —Continued.

2. The 1st and 2nd Defendant Appellants filed answer on 29th February, 1960 stating.
 - (a) That the appointment of the Plaintiff—Respondent is illegal and void ;
 - (b) That they are the lawful trustees of the said mosque by virtue of the Deed of Trust, religious law and custom of the Muslims, the local custom pertaining to the said mosque and the practice in force in the said mosque ;
 - (c) That under and by virtue of Awards of Charles Ambrose Lorensz of 29th May 1867 filed in D. C. Colombo Case No. 5214 and of 10 E. J. Samerawickreme K.C. in 1922 filed in D. C. Colombo Case No. 49877 and several decrees of the District Court of Colombo, the trustees of the said mosque were to be chosen from the male descendants of Mamina Pullai ; and prayed that Plaintiff's action be dismissed and that the Defendant - Appellants be declared the trustees of the said mosque.

3. The Plaintiff - Respondent also filed a petition (which petition and plaint were settled by a member of the Board of Wakfs that appointed the Plaintiff - Respondent as trustee of the said Mosque and Shrine) praying for an interim injunction restraining the Defendant - Appellants from collecting 20 the rents and offerings and from hindering the Plaintiff from performing his duties as Trustee of the Board of Wakfs and obtained an *ex-parte* enjoining order on 2nd November, 1959 and an interim injunction on 6th November, 1959.

4. On 10th November, 1959 the Defendant - Appellants filed objections to the issue of the enjoining order and the learned District Judge, after inquiry on 28th January, 1960 delivered his order refusing the injunction with costs and vacating the enjoining order. The Defendant - Appellants *obeyed* the enjoining order of Court and gave possession of the Mosque and Shrine to Plaintiff - Respondent and after the vacation of the enjoining order 30 took possession of the said Mosque and Shrine.

5. At the trial on 15th February, 1961 several issues were framed and the Administrative Assistant of the Department of Muslim Mosques & Charitable Trusts of Wakfs and the Plaintiff - Respondent gave evidence. The Defendant - Appellants did not call any evidence in the form of witnesses as their case was proved by the witness of the Plaintiff - Respondent and their Counsel made certain submissions on the law.

6. The learned District Judge delivered his judgment on in favour of the Plaintiff - Respondent.

7. Aggrieved by the Judgment and Decree of the learned District 40 Judge the Defendant - Appellants beg to appeal to Your Lordships Court on the following among other grounds to be urged by Counsel at the hearing of this case :

- (a) The said judgment is contrary to law and against the weight of evidence adduced in this case ;
- (b) The official witness (Administrative Assistant, Department of Wakfs) of Plaintiff - Respondent admitted in his evidence that ---
- No. 19
Petition of
Appeal to the
Supreme Court ---
13-3-61
---Continued.
- (i) the Defendant-Appellants were the male descendants of Mamina Pullai ; and
- (ii) the instrument of trust, which was nearly a hundred years old, stated that only male descendants of Mamina Pullai should be trustees of the said Mosque and Shrine. The learned District Judge had disregarded this evidence.
- (c) The document D1 which was a notice from the Commissioner of Mosques and Muslim Charitable Trusts clearly stated that preference will be given to descendants on the male line of the late Mamina Pullai. The Board of Wakfs had illegally and improperly appointed Plaintiff - Respondent contrary to this requirement ;
- (d) Plaintiff - Respondent's appointment was illegal and void as the Board of Wakfs has disregarded Section 14(1) of Act No. 51 of 1956 and other provisions of law ;
- (e) There was no evidence placed before the learned trial judge regarding the properties movable and immovable that belonged to the said mosque ;
- (f) It is submitted that the properties described in the Schedule to the plaint are not governed by Section 16 of Act No. 51 of 1956 but from a family trust as stated in document submitted by the Plaintiff - Respondent at the trial.

Wherefore the Defendant - Appellants pray that Your Lordships Court be pleased to set aside the judgment and decree of the learned District Judge and dismiss the action of Plaintiff - Respondent, for costs and for such further and other relief as to Your Lordships Court seem meet.

(Sgd.) A. A. KHAMSUS ZACKIYA,
*Proctor for 1st & 2nd
Defendants-Appellants.*

Petition of the 1st and 2nd Defendants - Petitioners

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek of No. 26, 1st Mosque
 Lane, Colombo 12.

Plaintiff - Respondent

No. 837/ZL.

Vs.

1. N. M. Ishak of Dewatagaha Mosque, Baptist
 Chapel Road, Colombo 7

10

and

2. A. R. M. Rauf of No. 14/41 Baptist Chapel
 Road, Colombo 7

Defendants - Petitioners.

This 13th day of March, 1961.

The petition of the 1st and 2nd defendants-petitioners above-named appearing by A. A. K. Zackiya, their Proctor states as follows :—

1. The Plaintiff-respondent instituted this action alleging that he was appointed the sole trustee of the Dewatagaha Mosque and Shrine against the petitioners and for orders :—

20

- (a) Requiring the petitioners to deliver to respondent the movable and immovable property described in the Schedule of the plaint and the documents relating thereto.
- (b) Directing the Petitioners to be ejected from the Mosque and Shrine and that the respondent be placed in possession thereof.
- (c) directing the petitioners to render accounts and
- (d) for permanent injunction restraining the petitioners
 1. receiving rents and offerings and
 2. hindering Plaintiff-Respondent performing as trustee.

2. On 13-3-61 the learned District Judge entered judgment against the petitioners in favour of the plaintiff-Respondent as prayed for with costs.

3. The petitioners appealed to the Honourable the Supreme Court against the said judgment and decree.

4. The Plaintiff-Respondent is taking steps to issue writs against the defendants-petitioners.

5. If the Plaintiff-Respondent is allowed to issue writs against the Defendants-Petitioners they will suffer irreparable loss and harm and the decision in appeal if in their favour will be rendered wholly infructuous and nugatory.

6. No injustice will be caused to the respondent on staying execution of the decree entered in this case pending the decision in appeal.

WHEREFORE the petitioners pray :—

- 10 (a) that the Court be pleased to order execution of the said decree to be stayed pending the decision in appeal.
- (b) and for such other and further relief as to this Court shall seem meet.

*Proctor for 1st and 2nd
Defendants - Petitioners.*

No. 21

Affidavit of the 1st and 2nd Defendants - Petitioners.

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek of No. 26, 1st Mosque Lane,
Colombo.

20

No. 837/ZL

Vs.

Plaintiff.

1. N. M. Ishak and
2. A. R. M. Rauff both of Baptist Chapel Road,
Colombo 7.

Defendants.

And

1. N. M. Ishak of Dewatagaha Mosque, Baptist
Chapel Road, Colombo 7. and
2. A. R. M. Rauff of 14/4, Baptist Chapel Road,
Colombo 7.

30

Petitioners.

Vs.

I. L. M. Thoufeek of No. 26, 1st Mosque Lane,
Colombo 12.

Respondents.

No. 20
Petition of the
1st and 2nd
Defendants-
Petitioners—
13-3-61
—Continued.

No. 21
Affidavit of the
1st and 2nd
Defendants-
Petitioners —
13-3-61

No. 21
Affidavit of the
1st and 2nd
Defendants-
Petitioners —
13-3-61
—Continued.

We, N. M. Ishak and A. R. M. Rauff both of Baptist Chapel Road, Colombo 7 not being Christians do hereby solemnly sincerely and truly declare and affirm as follows :—

1. We are the 1st and 2nd Defendants - Petitioners abovenamed.

2. The Plaintiff - Respondent instituted this action alleging that he was appointed the sole trustee of the Dewatagaha Mosque and Shrine against us and for orders :—

(a) Requiring us to deliver to respondent the movable and immovable property described in the Schedule of the plaint and the documents relating thereto. 10

(b) Directing us to be ejected from the said Mosque and Shrine and that the Plaintiff - Respondent be placed in possession thereof ;

(c) Directing us to render accounts and

(d) for permanent injunction restraining us :—

1. receiving rents and offerings and

2. hindering Plaintiff - Respondent performing as trustee.

3. On the 13th of March, 1961, the learned District Judge entered judgment against us in favour of the Plaintiff - Respondent as prayed for with costs.

4. We have appealed to the Supreme Court against the said judgment 20 and decree.

5. The Plaintiff - Respondent is taking steps to issue writ of execution and writ of ejectment against us.

6. If the Plaintiff - Respondent is allowed to issue writs against us we will suffer irreparable loss and harm and the decision in appeal if in our favour will be rendered wholly infructuous and nugatory.

7. No injustice will be caused to the Plaintiff-Respondent in staying execution of decree entered in this case pending the decision in appeal.

8. We beg that the Court be pleased to order execution of the said decree to be stayed pending the decision in appeal. 30

Signed and affirmed the same to }
at Colombo, on this 13th day of } (Sgd.) N. M. Ishak
March 1961. } (Sgd.) I. L. M. Rauff.

Before me

(Sgd.) J. B. EDIRMANASINGHE,
Commissioner for Oaths.

No. 22

No. 22
Affidavit of
the Plaintiff—
27-9-61

Affidavit of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

I. L. M. Thoufeek, Trustee of Dewatagaha
Mosque and Shrine of No. 26, 1st Mosque Lane,
Colombo 12.

Plaintiff.

No. 837/ZL

Vs.

- 10
1. N. M. Ishak of Dewatagaha Mosque, Baptist
Chapel Road, Colombo 7.
 2. Abdul Rahamed Rauff of No. 14/41, Baptist
Chapel Road, Colombo 7.

Defendants.

I, I. L. M. Thoufeek not being a Christian do solemnly sincerely and truly declare and affirm that :

1. The Defendants in the above case were ordered by Court to deposit to the credit of the above case every month commencing 10-4-1961 the money left over after making necessary payments with proof of payments. The Court further ordered that if they fail to do so the Plaintiff will be entitled to take writ.

20

2. The defendants have failed to file true and proper accounts for *inter alia* the reasons set out below.

- (a) The average till collections are far in excess of the figures given in the accounts filed by the Defendants. I was in possession of the said Mosque from 19th November, 1959 to 30th January, 1960 during which period the offerings amounted to Rs. 2,451/40 per month. I have submitted a statement of account appertaining to the said period to the Wakf Board.
 - (b) The Defendants have failed to pay the Wakf Board the commission due to them on the collections received at the Mosque.
 - (c) The Defendants have failed to account for the rents received from all the properties belonging to the Trust save and except premises 12 and 14/A, Baptist Chapel Road, Colombo 7. In the account for the month ending 31st April, 1961 they contend that the rents due
- 30

No. 22
Affidavit of
the Plaintiff —
27-9-61
—Continued.

on premises Nos. 8, 10, 10/C, 10/D, 16, 16/A, and 18 Baptist Chapel Road, Colombo 7 have been paid at the inception of the said leases. I do not accept this position, *however* assuming this to be correct the Defendants have failed to account for the rents derived from premises Nos. 3, 5, 7, 9, 14/2, 14/3, 14/4, 14/5, 14/6, 14/8 and 14/9 Baptist Chapel Road, Colombo 7 set out in the decree.

(d) The Defendants have credited themselves with salary amounting to approximately Rs. 400/- per month. This sum is unauthorised payment and cannot be justified except with the permission of the Wakf Board. 10

(e) The Defendants have debited the Trust Funds with the legal expense incurred in this action, both in this Court and in the appeal from the judgment of this Court. They have further debited the Trust Fund with legal expenses incurred in defending themselves in a criminal charge in the Magistrate's Court Case No. 34110/B as well as expenses incurred in Colombo Magistrate's Court Cases Nos. 29303/C, 29304/C, 28454/C and 27830/C.

(f) The Defendants have withheld the names of the High Priest, Arabic Teacher, Mosque Mothin, Attendant and Clerk and thereby not afforded an opportunity of verifying the said payments. 20

(g) The Defendants have failed to account for the monies collected from the children attending the Arabic classes (namely Rs. 2/- per head per month) from which payment to the Arabic Teacher should have been made.

(h) On or about 16th April 1961, the Defendants held the annual almsgiving customarily held by the Trustees of the said Mosque. The Defendants have failed to account for the collections and contributions made specially for the said almsgiving.

Read over signed and affirmed
to at Colombo on this 27th day
of September, 1961. }

(Sgd.) I. L. M. Thoufeek. 30

Before me

(Sgd.) A. V. PUSHPADEVI JOSEPH,
Commissioner for Oaths.

Statement of Objections of 1st and 2nd Defendants**IN THE DISTRICT COURT OF COLOMBO**

I. L. M. Thoufeek of No. 26 1st Mosque Lane,
Colombo.

Plaintiff.

No. 837/ZL

Vs.

1. N. M. Ishak and
2. A. R. M. Rauff both of Baptist Chapel Road,
Colombo 7.

10

Defendants.

On this 22nd day of January, 1962.

The statement of objections of the Defendants abovenamed appearing by A. A. Khamsuz Zackiya, their Proctor, states as follows :—

1. The Defendants admit the averments in paragraph 1 of the affidavit.
2. The defendants deny that they have failed to file true and proper accounts as set out in the averments in paragraph 2 of the affidavit and state they have abided by the order of Court.
3. The defendants deny that the average till collections are far in excess
20 of the figures given in the accounts filed by them.
4. The Defendants state that the Wakf Board declined and refused to accept the commission due to them on the collections although it was tendered to them.
5. The defendants also state that the names of the High Priest, Arabic Teacher, Mosque Mothin, Attendant and Clerk are well known to the plaintiff and members of the congregation and are in the books of the defendants as they are not fictitious characters.
6. The Defendants further state that the Arabic classes are a charitable
30 institution controlled by the Arabic Teacher who uses the premises merely for convenience.
7. The defendants further state that the annual alms-giving is conducted by some members of the public assisted by the Defendants who have no control of the collections and contributions.
8. The defendants also state that this application of the Plaintiff is not maintainable in law and is made purely to harass the defendants who have given security in Rs. 1,000/- and complied with the order of Court.

No. 23
Statement of
Objections of
1st and 2nd
Defendants —
22-1-62
—Continued.

9. The Defendants also state that this application of the plaintiff assisted by one Cader (who has been convicted in Court) is purely to annoy them.

10. The said Cader has failed to oust the Defendants as Trustees of the Dewatagaha Mosque in several actions filed in this Court during the last 35 to 40 years.

11. The Plaintiff has not paid defendants an order for costs entered in their favour in this case and continues to make these applications to harass the defendants.

12. WHEREFORE the Defendants pray that the application of the Plaintiffs be dismissed with costs against the Plaintiff in person and for such other and further relief as to this Court shall seem meet. 10

(Sgd.) A. A. KHAMSUZ ZACKIYA,
*Proctor for 1st and 2nd
Defendants.*

Settled by :

M. MARKHANI
Advocate.

No. 24
Proceedings before
the District
Court —
16-5-62 &
19-11-62

No. 24

Proceedings before the District Court

16-5-62

20

Mr. Advocate Nazim instructed for Plaintiff.

Mr. Advocate Kandiah with Mr. Advocate Marcani instructed for the Defendant.

Parties move that they be granted another date for inquiry.

Inquiry postponed for 1-8-62 in ' B ' Court.

(Sgd.)
Additional District Judge.

19-11-62.

Mr. Advocate Nazim instructed for the Plaintiff.

Mr. Advocate V. Kandiah with Mr. Advocate Marcani instructed for the Defendant. 20

Of consent call case for inquiry on 5-3-63.

(Sgd.)
Additional District Judge.

No. 25

No. 25
Decree of the
Supreme Court
dismissing Appeal—
9-10-63

Decree of the Supreme Court dismissing Appeal

S.C. 146/'61 (F)

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER OTHER
REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

I. L. M. Thoufeek, Trustee of Dewatagaha
Mosque and Shrine of No. 26, 1st Mosque
Lane, Colombo 12.

Plaintiff.

Vs.

N. M. Ishak of Dewatagaha Mosque, Baptist
Chapel Road, Colombo 7 and others.

Defendants.

N. M. Ishak of Dewatagaha Mosque, Baptist
Chapel Road, Colombo 7 and another

*Defendants - Appellants.**against*

I. L. M. Thoufeek, Trustee of Dewatagaha
Mosque and Shrine of No. 26, 1st Mosque
Lane Colombo 12.

Plaintiff - Respondent.

C. M. Shahul Hamid of No. 180/11, Maliga-
watte Road, Colombo 10.

Defendant - Respondent.

Action No. 837/ZL

District Court of Colombo.

This cause coming on for hearing and determination on the 9th day of
October, 1963 and on this day, upon an appeal preferred by the Defendants-
30 Appellants before the Hon. Hugh Norman Gregory Fernando, Puisne
Justice and the Hon. Gardiye Punchihewage Amaraseela Silva, Puisne
Justice of this Court, in the presence of Counsel for the Defendants - Appel-
lants and Plaintiff - Respondent.

It is considered and adjudged that this appeal be and the same is hereby
dismissed.

It is ordered and decreed that the Defendants - Appellants do pay to the
Plaintiff - Respondent the taxed costs of this appeal.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at
Colombo, the 18th day of October in the year One thousand Nine hundred
40 and Sixty Three and of Our Reign the Twelfth.

(Sgd.) B. F. PERERA,
Deputy Registrar, Supreme Court.

Application for Conditional Leave to Appeal to

The Privy Council

**IN THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON**

In the matter of an application for Conditional Leave to appeal to the Privy Council in S.C. 146/61 (F) D.C. Colombo 837/ZL.

S.C. No. 146/61
D.C. Colombo
No. 837/ZL

10

1. N. M. Ishak, and
2. A. R. M. Rauf both of Dewatagaha Mosque,
Baptist Chapel Road, Colombo 7.

Defendants - Appellants

Vs.

1. I. L. M. Thoufeek of No. 26, 1st Mosque Lane,
Colombo 12.

Plaintiff-Respondent

2. C. M. Shahul Hamid of No. 180/11, Maligawatte Road, Colombo 10.

20

Defendant-Respondent

1. N. M. Ishak, and
2. A. R. M. Rauf both of Dewatagaha Mosque
Baptist Chapel Road, Colombo 7.

Petitioners-Appellants

Vs.

1. I. L. M. Thoufeek of No. 26, 1st Mosque Lane, Colombo 12.
2. C. M. Shahul Hamid of 180/11, Maligawatta Road, Colombo 10.

No. 26
Application for
Conditional Leave
to Appeal to the
Privy Council —
18-10-63
—Continued.

*Respondents**To :*

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE
SUPREME COURT OF THE ISLAND OF CEYLON.

10 This 18th day of October 1963.

The Petition of the abovenamed Petitioners - Appellants appearing by A. A. Khamsuz Zackiya, their Proctor, states as follows :—

1. That feeling aggrieved by the judgment, order and decree of this Honourable Court pronounced on the 9th day of October 1963, the Petitioners are desirous of appealing to Her Majesty the Queen in Council.

2. That the said judgment is a final judgment and the matter in dispute on the appeal is over Rs. 5,000/- in value and involves a claim and question respecting property and civil rights of the value of over Rs. 5,000/-. The 1st Respondent who was Plaintiff in this case valued the subject matter of
20 this action at Rs. 15,000/- in his plaint.

3. That notices of the intended application for leave to appeal were sent by the Petitioners to the Respondents (in compliance with Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance by registered post on October 10th 1963.

4. Copies of the aforesaid notices and the registered Postal Article Receipts are produced marked ' X ' and ' Y ' respectively.

WHEREFORE the Petitioners-Appellants pray that Your Lordship's Court be pleased to grant Conditional Leave to appeal against the said judgment, order and decree of this Court pronounced on 9th October 1963 to
30 Her Majesty the Queen in Council and for costs and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) A. A. KHAMSUZ ZACKIYA,
Proctor for Petitioner - Appellants.

**Judgment of the Supreme Court granting Conditional Leave
to Appeal to the Privy Council**

IN THE MATTER OF AN APPLICATION FOR CONDITIONAL LEAVE
TO APPEAL TO THE PRIVY COUNCIL IN S.C. 146/61 (F) D.C. COLOMBO 837/ZL

S.C. Application No. 466/63.

Present : ABEYESUNDERE, J. & SIRIMANE, J.

Counsel : M. TIRUCHELVAM, Q.C., with M. MARKHANI for petitioners-
appellants.

H. W. JAYAWARDENA, Q.C., with M. T. M. SIVARDEEN for first
plaintiff - respondent.

Argued and decided on : June 25, 1964.

ABEYESUNDERE, J.

Conditional Leave to appeal to Her Majesty-in-Council is granted on the usual terms to the petitioners.

Although the first respondent in his statement of objections filed in this Court objects to the grant of Conditional Leave to the petitioners, Mr. H. W. Jayawardena, Q.C., who appears for the first respondent, states that the first respondent has now no objections to the grant of Conditional Leave to appeal to Her Majesty-in-Council. In the statement of objections filed by the first respondent there is also an application for a direction of this Court that the judgment and decree of this Court in S.C. case No. 146/(F)/61 D.C. Colombo case no. 837/ZL shall be carried into execution, subject to such conditions and terms as may be imposed by this court.

I direct that the decree in the aforesaid case be carried into execution if the persons in whose favour it was given shall, before the execution thereof, hypothecate Rs. 5,000/- in cash with the Registrar of this Court as security for the due performance of such order as Her Majesty-in-Council thinks fit to make on the appeal of the petitioners.

(Sgd.) A. W. H. ABEYESUNDERE,
Puisne Justice.

30

SIRIMANE, J.

I agree.

(Sgd.) A. L. S. SIRIMANE,
Puisne Justice.

**Minute of Order granting Conditional Leave to Appeal to the
Privy Council**

No. 28
Minute of Order
Granting Condi-
tional Leave to
Appeal to the
Privy Council —
25-6-64

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to
Appeal to the Privy Council under the Rules set out in the
Schedule to the Appeals (Privy Council) Ordinance.

1. N. M. Ishak, and
2. A. R. M. Rauf both of Dewatagaha Mosque,
Baptist Chapel Road, Colombo 7.

S. C. Application
No. 466 of 1963.

*Defendants - Appellants
Petitioners*

Vs.

S. C. 146/61
D. C. Colombo
Case No. 837/ZL

1. I. L. M. Thowfeek of No. 26, 1st Mosque Lane,
Colombo 12.

Plaintiff - Respondent

2. C. M. Shahul Hamid of No. 180/11, Maliga-
watta Road, Colombo 10.

Defendant - Respondent

The application of the abovenamed Petitioners for Conditional Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 9th day of October 1963 in S.C. 146 (Final) of 1961 D.C. Colombo Case No. 837/ZL, having been listed for hearing and determination before the Honourable Asoka Windra Hemantha Abeyesundere, Q.C., Puisne Justice, and the Honourable Albert Lionel Stanley Sirimanne, Puisne Justice, in the presence of M. Tiruchelvam, Esquire, Q.C., with M. Markhani, Esquire, Advocates for the Petitioners and H. W. Jayawardene, Esquire, Q.C., with M. T. M. Sivardeen, Esquire, Advocates for the Respondents, order has been made by Their Lordships on the 25th day of June 1964 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

Their Lordships have also directed that the decree in the aforesaid case be carried into execution if the persons in whose favour it was given shall, before the execution thereof, hypothecate Rs. 5,000/- in cash with the Registrar of the Supreme Court as security for the due performance of such order as Her Majesty-in-Council thinks fit to make on the appeal of the petitioners.

(Sgd.) N. NAVARATNAM,
Registrar of the Supreme Court.

No. 29

No. 29
Application for
Final Leave to
Appeal to the
Privy Council —
30-7-64

**Application for Final Leave to Appeal to the Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

In the matter of an application for Final Leave to Appeal to Her Majesty the Queen in Council.

1. N. M. Ishak of No. 14/3, Baptist Chapel Road, Colombo 7, and
2. A. R. M. Rauf of No. 14/4, Baptist Chapel Road, Colombo 7.

Defendants - Appellants - Petitioners. 10

S. C. Application
No. 466/63.

Vs.

S. C. 146/61
D. C. Colombo
No. 837/ZL

1. I. L. M. Thowfeek of No. 26, 1st Mosque Lane, Colombo, and

Plaintiff-Respondent.

2. C. M. Shahul Hameed of No. 180/11, Maligawatte, Colombo.

20

3rd Defendant-Respondent.

On this 30th day of July 1964.

TO HIS LORDSHIP THE CHIEF JUSTICE AND OTHER JUDGES OF THE
HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

The Humble Petition of the Defendants - Appellants - Petitioners abovenamed appearing by A. A. Khamsuz Zackiya, their Proctor, states as follows :—

1. That the Defendants - Appellants - Petitioners on the 25th day of June 1964 obtained Conditional Leave from this Honourable Court to appeal 30 to Her Majesty the Queen in Council against the judgment of this Honourable Court pronounced on the 9th day of October 1963.

2. That the Defendants - Appellants - Petitioners have in compliance with the conditions on which such leave was granted deposited with the Registrar of the Supreme Court the sum of Rupees Three Thousand (Rs. 3,000/-) being the security for costs of appeal under Rule 3 (a) of the Scheduled Rules (Privy Council Appeals Ordinance) and hypothecated the said sum of Rupees Three Thousand (Rs. 3,000/-) by Bond dated 24th July 1964 for the due prosecution of the appeal and the payment of all costs that may become payable to the Respondents in the event of the Defendants - Appellants - 40

Petitioners not obtaining an order granting them Final Leave to appeal or if the appeal be dismissed for non prosecution or of Her Majesty the Queen in Council ordering the Defendants - Appellants - Petitioners to pay the Respondents' costs of appeal, and have further deposited with the Registrar of this Court a sum of Rupees Three Hundred (Rs. 300/-) in respect of the amounts and fees as required by paragraph 8 (a) of the Appellate procedure (Privy Council) Order 1921 made under section 4 (1) of the Privy Council Appeals Ordinance.

No. 29
Application for
Final Leave to
Appeal to the
Privy Council —
30-7-64
—Continued.

10 WHEREFORE the Defendants - Appellants - Petitioners pray that they be granted Final Leave to appeal against the said judgment of this Honourable Court dated the 9th day of October 1963 to Her Majesty the Queen in Council.

(Sgd.) A. A. KHAMSUZ ZACKIYA,
Proctor for Defendants - Appellants - Petitioners.

No. 30

Minute of Order granting Final Leave to Appeal to the
Privy Council

No. 30
Minute of Order
granting Final
Leave to Appeal
to the Privy
Council —
9-9-64

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

20 In the matter of an application for Final Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

1. N. M. Ishak, and
2. A. R. M. Rauoof both of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.

S. C. Application
No. 252 of 1964.

Defendants-Appellants.
Petitioners.

S. C. 146/61
D. C. Colombo
30 Case No. 837/ZL.

Vs.

1. I. L. M. Thowfeek of No. 26, 1st Mosque Lane, Colombo 12.

Plaintiff-Respondent.

2. C. M. Shahul Hamid of No. 180/11, Maligawatte Road, Colombo 10.

Defendant - Respondent.

No. 30
Minute of Order
granting Final
Leave to Appeal
to the Privy
Council—
9-9-64
—Continued.

The Application of the abovenamed Petitioners for Final Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 9th day of October 1963 in S. C. 146 (Final) of 1961 D.C. Colombo Case No. 837/ZL, having been listed for hearing and determination before the Honourable Ponnuduraisamy Sri Skanda Rajah, Puisne Justice, and the Honourable Anthony Christopher Augustes Alles, Puisne Justice, in the presence of M. Markhani, Esquire, Advocate, for the Petitioners and there being no appearance for the Respondents, order has been made by Their Lordships on the 9th day of September 1964 allowing the aforementioned application 10 for Final Leave to Appeal to Her Majesty the Queen in Council.

(Sgd.) N. NAVARATNAM,
Registrar of the Supreme Court.

No. 31
Certificate in terms
of Rule 26 of the
Rules set out in
the Schedule to
the Appeals
(Privy Council)
Ordinance—
21-3-66

No. 31

**Certificate in terms of Rule 26 of the Rules set out in
the Schedule to The Appeals (Privy Council) Ordinance.**

**IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON**

Supreme Court of Ceylon,
No. 146 (Final) of 1961.

District Court of Colombo, 20
Case No. 837/ZL

BETWEEN

1. Nilamdeen Mohamed Ishak, and
 - (Dead) 2. Abdul Rahman Mohamed Rauoof,
both of Dewatagaha Mosque, Baptist Chapel Road, Colombo 7.
 3. M. R. M. Siddeek, No. 14/4, Baptist Chapel Road, Colombo.
- (substituted in place of the 2nd Defendant - Appellant who is dead).

(Defendants - Appellants)
Appellants 30

AND

1. Ibrahim Lebbe Mohamed Thowfeek of No. 26, 1st Mosque Lane, Colombo 12.
2. Colonda Marikar Shahul Hamid of No. 180/11, Maligawatta Road, Colombo 10.

(Plaintiff - Respondent)
(Defendant - Respondent)
Respondents.

WHEREAS subsequent to the order of the Supreme Court of the Island of Ceylon granting the abovenamed first and second Defendants - Appellants final leave to appeal to Her Majesty the Queen in Council from the judgment and decree of the said Supreme Court dated the 9th day of October, 1963 in S.C. 146 (Final) of 1961 D.C. Colombo Case No. 837/ZL and before the dispatch of the record of the proceedings thereof to England, the said record has become defective by reason of the death of a party to the appeal to Her Majesty the Queen in Council to wit : Abdul Rahman Mohamed Rauoof, the second Defendant-Appellant abovenamed ;

No. 31
Certificate in terms
of Rule 26 of the
Rules set out in
the Schedule to
the Appeals
(Privy Council)
Ordinance—
21-3-66
—Continued.

10 AND WHEREAS an application was made to the Supreme Court of the Island of Ceylon by Nilamdeen Mohamed Ishak, the first Defendant-Appellant abovenamed, praying that the Court be pleased to grant a certificate showing that M. R. M. Siddeek of No. 14/4, Baptist Chapel Road, Colombo, is the fit and proper person to be substituted in place of the deceased abovenamed :

WHEREFORE I, Nagalingam Navaratnam, Registrar of the Supreme Court of the Island of Ceylon, do hereby certify, in terms of Rule 26 of the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance, that the Supreme Court of the Island of Ceylon is of the opinion that the above-
20 named M. R. M. Siddeek is the proper person to be substituted in place of the party who is dead.

WITNESS my hand and the Seal of the Supreme Court of the Island of Ceylon, at Colombo, this 21st day of March, 1966.

Sgd. N. NAVARATNAM,
Registrar of the Supreme Court, Ceylon.

PART II
EXHIBITS

Application of N. M. Ishak for the registration of " Dewatagaha Mosque " under the Wakfs Act, No. 51 of 1956

P 1
Application of
N. M. Ishak for
the registration of
" Dewatagaha
Mosque " under
the Wakfs Act,
No. 51 of 1956.
26-10-57

DEWATAGAHA MOSQUE

N. M. Ishak — Chief Trustee.

A. R. M. Rauff
C. M. Shahul Hameed } Co-Trustees.

10

Cinnamon Gardens,
Colombo 7.
26th October, 1957.

The Commissioner,
Board of Wakfs,
Dam Street,
Colombo 11.

Sir,

Dewatagaha Mosque

We have the honour to request you to be good enough to register the above Mosque under the Wakfs Act No. 51 of 1956.

20

We annex a statement containing particulars.

We remain,
Your Obedient Servants,

(Sgd.) N. M. ISHAK
Chief Trustee.

Statement Annexed to P1

(1) Name of Trustees :— N. M. Ishak — Chief Trustee.

| | | |
|---------------------|---|--------------|
| A. R. M. Rauff | } | Co-Trustees. |
| C. M. Shahul Hameed | | |

(2) Title :— Deed 2665 of 15-7-1857

(S. L. Cassim Tamby N.P.)

Creates Wakf.

Deed 3892 of 29-11-1873 (S. L. Cassim Tamby N.P.)

10

Packeer Tamby refers to Judgment in D.C. Colombo 61162 and appoints sons Cassim Bawa and Packeer Tamby to manage affairs,

Award of Charles Ambrose Lorensz on 29-5-1867 Mamina Pullai's descendants to be Trustees.

1922 — Award of Mr. E. J. Samarawickrama D.C. Trustees to be from among the members of the family of M. L. Packeer Tamby.

Several D.C. Cases in Colombo had recognised the present Trustees as Trustees of the Mosque.

Three of us are the male descendants of the original owner Mamina Lebbe and his son Packeer Tamby. Since 1857 up to date (100 years) the legal right has vested in the present three (3) trustees both by custom and by law.

(3) Properties :— Shrine No. 14 Baptist Chapel Road, Colombo 7.

Mosque No. 12 Baptist Chapel Road, Colombo 7.

Boutiques Nos. 8, 10, 16 and 18, Baptist Chapel Road, Colombo 7.

Tenements Nos : 3, 5, 7, 9, Baptist Chapel Road, Colombo 7.

Tenements are occupied by the families of the trustees.

(4) Income :— Shrine — About Rs. 1,000/- per month.

30

Boutiques have been leased in 1955 and 1956 and the Leases expire in and after 1960.

(5) Rates :— Rates for the boutiques are paid by the lessees.

Also repairs. Rates for tenements total Rs. 177/77 Quarter.

| | | | | |
|-----|--------------|---------------------------|---|--|
| (6) | Expenses :-- | Alim Sahib ... | ... Rs. 60/- per month. | P 1A Statement Annexed to P1 —Continued. |
| | | Modin ... | ... Rs. 45/- per month. | |
| | | Watcher ... | ... Rs. 30/- per month. | |
| | | Clerk ... | ... Rs. 50/- per month. | |
| | | Latrine & Garden Cooly... | Rs. 25/- per month. | |
| | | Manager Shrine | ... Rs. 40/- per month. | |
| | | Repairs to Shrine | ... Rs. 75/- per month. | |
| | | Electricity ... | ... Rs. 75/- per month. | |
| | | Mosque School | ... Rs. 100/- per month. | |
| 10 | | Tax ... | ... Rs. 59/26 or 177/77 per Quarter. | |
| | | Burda ... | ... Rs. 48/- | |
| | | Charities ... | ... Rs. 100/-. | |

Balance is divided among the trustees as remuneration for their management and for two annual Kandoories given.

A sum of Rs. 4,000/- was taken from Mrs. Mariam Umma of No. 646 Baseline Road, Dematagoda, Colombo on Mortgage for the legal expenses incurred in D.C. Colombo 5537 and other cases.

The above particulars are true and accurate.

20 Certified true copy.

(Sgd.) T. DURAIRATNAM
13-2-61.

for Commissioner for Mosques &
Muslim Charitable Trusts.

(Sgd.) N. M. Ishak

P 2

Notice inviting applications for appointment as Trustees of the Dewatagaha Mosque & Shrine

GOVERNMENT NOTICE

Trusteeship — Dewatagaha Mosque & Shrine

30 The Wakfs Board invites applications from Muslims desirous of being considered for appointment as trustees of the Dewatagaha Mosque and Shrine, Baptist Chapel Road, Colombo.

2. Preference will be given to descendants on the male line of the late Mamuna Pillai.

P 2
Notice inviting
applications for
appointment as
Trustees of the
Dewatagaha
Mosque and
Shrine—

P 2
Notice inviting
applications for
appointment as
Trustees of the
Dewatagaha
Mosque and
Shrine—
—Continued.

3. Applications should reach me in the following form on or before the 13th August, 1959.

- (a) Full name :—
- (b) Address :—
- (c) Age :—
- (d) Profession :—
- (e) Nationality :—
- (f) Relationship if any, to the late Mamuna Pillai (give details) :—
- (g) Have you been convicted in a Court of law ; if so, give details :—
- (h) Details of property owned with value thereof :— 10
- (i) Special qualifications, if any :—

(Sgd.) M. Z. MOHIDEEN
*Commissioner for Mosques & Muslim
Charitable Trusts*

P. O. Box 543,
No. 365, Galle Road,
Colombo 3.

Certified correct.

(Sgd.) T. DURAIRATNAM
13-2-61. 20
*for Commissioner for Mosques & Muslim
Charitable Trusts.*

P 3
Decision of the
Wakfs Board re-
Administration of
the Dewatagaha
Mosque and
Shrine —

P 3

**Decision of the Wakfs Board re-Administration of the
Dewatagaha Mosque and Shrine**

**DECISION OF THE WAKFS BOARD RE-ADMINISTRATION
OF THE DEWATAGAHA MOSQUE & SHRINE**

31st January, 1959.

It was decided to call Messrs. Ishak, Rauff, C. M. Shahul Hameed and C. B. Abdul Cader for an interview with the Board, ask them to bring all 20 copies of Court cases, deeds etc., with them, ask Mr. Shahul Hameed to bring with him Case No. M 26961 D.C. Colombo and other documents in his possession.

2nd May, 1959.

An inquiry was held. The evidence of Mr. C. B. Abdul Cader was recorded. Mr. A. R. M. Rauff requested a postponement, as his Counsel was not ready, and with whom all his documents were. Mr. Rauff also stated that Mr. Ishak was unable to attend because he was having kidney trouble. Mr. Rauff was asked to be present at the next date of inquiry. The Board also asked Mr. Shahul Hameed to be present at the next date, as it was too 40 late to record his evidence.

16th May, 1959.

The evidence of Mr. N. M. Ishak was recorded. The inquiry was postponed for 30th May, 1959.

P 3
Decision of the
Wakfs Board re-
Administration of
the Dewatagaha
Mosque and
Shrine —
—Continued.

30th May, 1959.

The evidence of Mr. A. R. M. Rauff was recorded.

11th July, 1959.

The evidence of Messrs C. M. Shahul Hameed and H. M. Ismail was recorded.

1st August, 1959.

10 The Board decided to call for applications for the post of trustee.

15th August, 1959.

It was decided to call Messrs A. H. G. Bhaila, M. I. Abdul Hassan, S. D. M. Makeen and I. L. M. Thoufeek for an interview on the 22nd August, 1959. Also acknowledge receipt of other applications and tell the applicants that their applications will be considered along with the others.

22nd August, 1959.

The Board decided to register this Mosque and Shrine bounded as follows :—

20 { East ; Baptist Chapel Road, North : Baptist Chapel, South and
West ; Colombo Municipal Printing Office. Messrs. A. H. G. Bhaila,
S. D. M. Makeen and I. L. M. Thoufeek were interviewed. Mr. Abdul
Hassen absented himself from the interview. The Board then
considered the applications of these four persons and Messrs. N. M.
Ishak, A. R. M. Rauff and C. B. Abdul Cader. The Board is of
P 3 { opinion that although the terms of the previous awards and the
documents relating to this Mosque, indicate that preferably a des-
cendant or descendants of Mamuna Pillai should be trustees, such
descendants as were interested in applying for trusteeship are
unsuitable for appointment. Therefore the Board decided to
30 { appoint Mr. I. L. M. Thoufeek as trustee till 31-12-59 in the first
instance. The Board decided to request the Inspector-General
of Police to give the trustee all assistance and protection. All other
applicants to be informed of the decision pertaining to the appoint-
ment of trustee. Messrs. Ishak, Rauff and Shahul Hameed are
to be informed that all properties belonging to this Mosque and
Shrine should be handed over to the trustee.

Minutes of the Decisions of the Wakfs Board**DECISIONS OF THE WAKFS BOARD RE-ADMINISTRATION
OF THE DEWATAGAHA MOSQUE & SHRINE**

31st January, 1959.

It was decided to call Messrs Ishak, Rauff, C. M. Shahul Hameed and C. B. Abdul Cader for an interview with the Board, ask them to bring all copies of Court cases, deeds etc., with them. Ask Mr. Shahul Hameed to bring with him Case No. M26961 D.C. Colombo and other documents in his possession.

10

2nd May, 1959.

An inquiry was held. The evidence of Mr. C. B. Abdul Cader was recorded. Mr. A. R. M. Rauff requested a postponement as his counsel was not ready, and with whom all his documents were. Mr. Rauff also stated that Mr. Ishak was unable to attend because he was having kidney trouble. Mr. Rauff was asked to be present at the next date of inquiry. The Board also asked Mr. Shahul Hameed to be present at the next date, as it was too late to record his evidence.

16th May, 1959.

The evidence of Mr. N. M. Ishak was recorded. The inquiry was postponed for 30th May, 1959.

30th May, 1959.

The evidence of Mr. A. R. M. Rauff was recorded.

11th July, 1959.

The evidence of Messrs. C. M. Shahul Hameed and H. M. Ismail was recorded.

1st August, 1959.

The Board decided to call for applications for the post of trustee.

15th August, 1959.

It was decided to call Messrs. A. H. G. Bhaila, M. I. Abdul Hassan, S. D. M. Makeen and I. L. M. Thoufeek for an interview on the 22nd August, 1959. Also acknowledge receipt of other applications and tell the applicants that their applications will be considered along with the others.

22nd August, 1959.

D 2
Minutes of the
Decisions of the
Wakfs Board.—
—Continued.

The Board decided to register this Mosque and Shrine bounded as follows :— East : Baptist Chapel Road, North : Baptist Chapel, South and West : Colombo Municipal Printing Office. Messrs. A. H. G. Bhaila, S. D. M. Makeen and I. L. M. Thoufeek were interviewed. Mr. Abdul Hassen absented himself from the interview. The Board then considered the applications of these four persons and Messrs. N. M. Ishak, A. R. M. Rauff and C. B. Abdul Cader. The Board is of opinion that although the terms of the previous awards and the documents relating to this mosque, indicate that
10 preferably a descendants or descendant of Mamuna Pillai should be trustees, such descendants as were interested in applying for trusteeship are unsuitable for appointment. Therefore the Board decided to appoint Mr. I. L. M. Thoufeek as Trustee till 31-12-59 in the first instance. The Board decided to request the Inspector-General of Police to give the trustee all assistance and protection. All other applicants to be informed of the decision pertaining to the appointment of trustee. Messrs. Ishak, Rauff and Shahul Hameed are to be informed that all properties belonging to this Mosque and Shrine should be handed over to the trustee.

5th September, 1959.

20 The Trustee, Mr. I. L. M. Thoufeek applied to the Board for permission to sue Messrs N. M. Ishak, A. R. M. Rauff and C. M. Shahul Hameed for the recovery of the properties scheduled hereunder :—

Dewatagaha Mosque and Shrine and all properties movable and immovable within the following boundaries :— East : Baptist Chapel Road ; North : Baptist Chapel ; South and West : Colombo Municipal Office inclusive of :—

- (a) Shrine No. 14 Baptist Chapel Road, Colombo 7.
- (b) Mosque No. 12, Baptist Chapel Road, Colombo 7.
- (c) Boutiques Nos. 8, 10, 10/A, 10C, 16, 16/A, 16/B, and 18 Baptist
30 Chapel Road, Colombo 7.
- (d) Tenements Nos. 3, 5, 7, 9, 14/2, 14/2A, 14/3, 14/4, 14/5, 14/6, 14/8 and 14/9, Baptist Chapel Road, Colombo 7.

The Board as required in section 25(1) of the Wakfs Act granted such approval. Mr. Thoufeek was also granted approval to sue for any other purposes connected with or incidental to the exercise and performance of his powers and duties of trustee.

14th November, 1959.

The trustee may be requested to seek legal advice in respect of the rents due from tenants of the boutiques and houses.

D 2
Minutes of the
Decisions of the
Wakfs Board--
—Continued.

28th November, 1959.

It was suggested that the Commissioner should call up Mr. Thoufeek and advise him regarding the payment of moneys to the Lebbe for reciting fathihās etc., and to see that the present arrangements are not disturbed for sometime. Mr. Thoufeek should also be asked to address the Board at its next meeting regarding the progress he has made in respect of this Mosque.

With regard to Mr. A. R. M. Rauff's request for copies of the proceedings in respect of the inquiry into affairs of the Dewatagaha Mosque, it was decided to issue him copies of his statement only and inform him that the statements of the other witnesses cannot be made available to him. He may also obtain on payment, copy of the particulars of this Mosque as appearing in the Register of Mosques. 10

The Board decided to inform Mrs. Ishak with reference to her representations made to the Board, that the Board regrets it cannot vary its decision.

29th December, 1959.

It was decided to re-appoint Mr. I. L. M. Thoufeek from 1-1-60 to 31-12-60. The applications of the other persons will be considered after the properties belonging to this Mosque and Dharga have been secured to the Mosque and Dharga.

20th February, 1960. 20

With reference to the Scheme of Management submitted by Mr. M. I. M. Haniffa it was decided not to vary the earlier decision of the Board. The Commissioner brought to the notice of the Board that Messrs. Ishak and Rauff met him on 19-2-60 and wanted to pay the 25% tax to the Muslim Charities Fund. After considering this matter, it was decided to refuse acceptance of the payment of the tax to the Muslim Charities Fund from any person other than the Trustee.

30th April, 1960.

The question of advancing moneys to Mr. Thoufeek for purposes of cases connected with the trusteeship dispute was discussed. It was felt that any advance on the Muslim Charities Fund would not be an appropriate charge on the Fund. Mr. Thoufeek's accounts as on 3-2-60 and previous accounts were tabled and admitted as correct. 30

(Sgd.) T. DURAIRATNAM.

(Sgd.) Illegibly.

*Commissioner for Mosques and
Muslim Charitable Trusts.*

Certified true copy.

(Sgd.) T. DURAIRATNAM.

Secretary/Wakfs Board, (Administrative Asst.).
8-2-61.

**Evidence given by the 1st Defendant (N. M. Ishak) before
the Wakfs Board**

P 7
Evidence given by
the 1st Defendant
(N. M. Ishak)
before the Wakfs
Board—
16-5-59

**RESUMPTION OF INQUIRY INTO THE DEWATAGAHA MOSQUE
R/334/C. 37**

16-5-59.

Nilamdeen Mohamed Ishak : 34 years of age, Chief Trustee, Dewatagaha Mosque, present with counsel, Y. L. M. Mansoor, Advocate (instructed by Mr. Khamsus Zackiya, Proctor S.C. & N.P.) present and states :—

10 “ My great great grandfather was made trustee by the Lorensz Award of 29-3-1867. I state that the land and buildings bounded on the east by Baptist Chapel Road, North by Baptist Chapel, South and West by the Colombo Municipal Printing Office, are all Wakf property. The premises Nos. 18, 16, 16/A, 16/B, 10/C, 12, 10/A and 10 Baptist Chapel Road and building houses Nos. 14/2, 14/2A, 14/3, 14/4, 14/6, 14/7, 14/8 and 14/9, Baptist Chapel Road are all Wakf property. I state that there is no Jama'ath attached.

In 61162 D.C. Colombo, Cassim Bawa and Packeerthamby were appointed trustees. Their appointment was in conformity with the Lorensz Award. The 1922 Samarawickrema Award states that the trustee should
20 be from among the family of Mr. Packirthamby. In D.C. 49877 of 1934 my father and Rauff's father were appointed trustees without prejudice to the rights of Shahul Hameed. My father was to be the Chief Trustee. In D.C. 5537 of 9-7-1936, the previous position was confirmed. I was to be appointed trustee after my father's death. In 1936 Nilamdeen (my father) Rauff and Shahul Hameed were trustees. In 1947 on the death of my father Nilamdeen, I succeeded him as trustee. Since that date all three of us are functioning as trustees. Mr. Shahul Hameed is also a trustee. But on account of sickness he has not taken part in the administration of the Mosque for the last three years. He does not get any income.

30 I maintain accounts. I have not forwarded accounts to the department. The accounts have been audited by Mr. Sambamurthy and are available. I shall forward a copy of the accounts to the department.

No. 18, Baptist Chapel Road was leased during my father's time. I have a copy of the lease agreement which I will forward to the department. My father obtained Rs. 3,000/- of this lease. We extended the lease for three years. The lease will now expire in 1960. I undertake to send a copy of the latest lease bond given to Ismail. Ismail has sub-let the verandah of No. 18 to a betel shop keeper.

40 No. 16, Baptist Chapel Road, Barber Saloon and No. 18, were both leased to Ismail. The authorised rent for No. 18, is Rs. 55/-. Rauff has rented No. 16A to Mr. Ranasinghe for a dispensary. I think the lease expires in 1960. I will send a copy of the lease bond to the department. The rent is about Rs. 75/- a month.

P 7
 Evidence given by
 the 1st Defendant
 (N. M. Ishak)
 before the Wakfs
 Board—
 16-5-59
 —Continued.

No. 16/B, Baptist Chapel Road was leased to Nooraniya Stores by me for Rs. 4,000/-. The lease expired in 1956. After the expiry of the lease I obtained Rs. 4,000/- from the proprietor covering the rent up to 1958. In 1958, I took a further sum of Rs. 3,000/- to be deducted at Rs. 95/- per month as rent. This Rs. 3,000/- was appropriated by me personally. The name of the tenant is Mr. Ghulam Hussain.

No. 10/C, Baptist Chapel Road is occupied by my brother Rahim. This was built about 4 or 5 years ago. He pays a tax of about Rs. 11/- a quarter. My brother built it after obtaining permission from us.

No. 12, Baptist Chapel Road was built by me in 1951. It cost me 10 about Rs. 2,000/- to build it. I pay a tax of Rs. 11/- a quarter.

No. 10/A, Saiva Hotel was also built by me, in 1951. The tax on that is about Rs. 45/-, I get Rs. 100/- as rent from it. It cost me about Rs. 8,000/- to build it. This is also to be the subject matter of a lease. I will forward a copy of the documents.

No. 10, Baptist Chapel Road, Cycle Shop belonging to Samoon is also leased. The lease expires in 1960. I have taken the lease rents at Rs. 6/- a month.

For all the dwelling houses, taxes are paid from the Ziarath Fund.

No. 14/2, is occupied by Haniffa my uncle, free of rent. No. 14/2A is 20 occupied by Issadeen, my father-in-law free of rent. So also No. 14/3. No. 14/4, which belongs to Dharga is occupied by Rauff free of rent. I occupy No. 14/5. No. 14/6 is occupied by relatives free of rent. No. 14/7 has been demolished as it was dilapidated. No. 14/8 is occupied by the present Katheeb I. L. M. Haniffa free of rent. Nos. 14/8 and 14/9 are one building although they are two numbers. There is a Madrasa attached to the Ziarath. Each child pays Rs. 2/- a month. There are about 70 to 80 children. Rauff is the manager of the school and the fees is collected by me.

No. 14/2 can be rented at Rs. 10/- a month. No. 14/2A and 3 together, can be rented at Rs. 40/-. No. 14/4 can be rented at Rs. 60/-. No. 14/5 can 30 be rented at Rs. 40/-. No. 14/6 can be rented at Rs. 80/- and 14/8-9 can be rented at Rs. 40/-.

There are two tills, one at the Ziarath and the other in the mosque. Both the tills are locked. The big till has three keys in the possession of the three of us. Shahul Hameed sends us his key. The small till has only one key, that is in my possession. The tills are opened once a week on Friday mornings. The tills are opened for the second time on Monday mornings, and about Rs. 80/- is realised. Friday collections amount to about Rs. 150/- to Rs. 160/-. For the last 4 or 5 years, we have not converted any of the gold, and silver offerings into cash. About 12 goats, 40 6 or 7 head of cattle, and about 120 fowls are received for a year. About 4 gallons of coconut oil are received for a week. About 4 pairs of doves are bought every week at Rs. 2/- or Rs. 2/50 per pair. They are released there itself. The collections on account of this, are immediately put into the till.

We take a quarter of the proceeds of the coconut oil, and the balance is distributed among the relatives who are residents of the premises in the Mosque land. During the 10 days feast, the till collections amount to Rs. 160/- and for the grand feast about Rs. 600/-. About 4,000 to 5,000 people attend the grand feast. There are now 300 sahanas belonging to the mosque. About 6 to 7 bags of rice are donated during the feast. Also we get donations of various other cereals of potatoes etc. Also cash contributions other than in the till are collected, amounting to Rs. 200/-. All books of accounts are available for inspection.

P 7
Evidence given by
the 1st Defendant
(N. M. Ishak)
before the Wakfs
Board—
16-5-59
—Continued.

10 The expenditure during the grand feast is about Rs. 2,000/- and during the 10 days feast about Rs. 200/-. We pay a tax of Rs. 161/- a quarter for the houses. The light bill amounts to about Rs. 130/-. During the feast it amounted to Rs. 400/-. The Imam is paid Rs. 60/- a month, the Muessin Rs. 30/- Garden Labourer Rs. 30/-. About Rs. 600/- is expended on repairs of the building. We get contributions for repairs also. The contributions are in the form of lime, frames etc.

No. 14/4, occupied by Rauff has been mortgaged to Mariambeebe for Rs. 4,000/-. No interest is paid on the Bond.

20 (At this stage Mr. Mansoor, Advocate objects to the Board inquiring into past accounts before the registration of the Mosque, and contends that these are all irrelevant to the question of registration. Under regulation 14(2) and section 13 of the Wakfs Act the objections are over-ruled).

Rs. 4,000/- was given to Mr. Pope who has given a receipt for this amount to me. I will send the receipt to this department. We have paid off about Rs. 2,000/- out of the mortgage.

The Jama'ath may be composed of persons who attend the shrine or Mosque at least once a week. The three of us should be sole trustees. I have no objection to a Committee to assist the three trustees".

The inquiry was postponed for 30th May, 1959.

30

(Sgd.) T. DURAIRATNAM,
Administrative Assistant
(Secretary, Wakfs Board)

Certified Correct.

(Sgd.) T. DURAIRATNAM
for Commissioner for Mosques &
Muslim Charitable Trusts.

13-2-61

**Evidence given by the 1st Defendant (N. M. Ishak) before
The Wakfs Board**

RESUMPTION OF INQUIRY INTO DEWATAGAHA MOSQUE

ON 30-5-59 — R/334/C.37

Mr. Marcany, Advocate, states that the previous witness Mr. Ishak wants to correct certain statements made by him on the last date of inquiry.

Mr. Ishak recalled present and states :

“ The assessment number of the Mosque is No. 12, Baptist Chapel Road. Nos. 12 and 14 are the Mosque and Shrine. They are two properties”. 10

Question by Mr. Marcany : Are the properties other than 12 and 14 Wakf or family Trusts ?

Answer : Family Trust.

Question : Did you write letter dated 2nd December, 1958 to the Commissioner in which you state that this is a family Trust ?

Answer : Yes.

Question by Commissioner : On the last date when you gave evidence did anyone compel you to make any statement or did you give them voluntarily ?

Answer : I gave my statement without compulsion and voluntarily. 20

Question : On the last date, did you not say that the premises and property bounded by the Municipal Printing Press, Baptist Chapel Road and Baptist Chapel are all Wakf property ?

Answer: I said so. I did not know the proper meaning of Wakf. But it is a family trust. I now understand the meaning of Wakf. I state that the land on which the Mosque and Ziaram are situated are family trusts. There are no Wakf property.”

2. Mr. Marcany refers to document 2665 of 1857 and states :—

“ The entirety of the property contemplated in Deed 2665 of 1857 is not Wakf property. From the start we have been acting on the basis that this was a family trust on all the deeds viz : Deed 2665 of 15-7-1857, Lorenz Award, Samarawickrema Award. Trusteeship devolves on the descendants of Mamuna Pillai. The beneficiaries are purely the descendants of Mamuna Pillai. I state that this is a family trust.” 30

**Evidence given by the 2nd Defendant (A. R. M. Rauff) before
the Wakfs Board**

P9
Evidence given by
the 2nd Defendant
(A. R. M. Rauff)
before the Wakfs
Board—
30-5-59

3. **Abdul Rahuman Mohamed Rauff.** 51 years of age, business-
man of No. 14/4, Baptist Chapel Road, represented by Advocate Mr. Marcany
appearing with Advocate Mr. Mansoor instructed by Mr. Khamsus Zackiya,
Proctor S.C. & N.P., present states :—

“ I have been the trustee of the Mosque since 1945. The other trustees
are Messrs. Ishak and Shahul Hameed. There is a Jama'ath. I maintain a
10 register of the members of the Jama'ath. There is a shrine-room and a
Mosque. There are about 65 members in the Jama'ath Register. Mr. N. D.
H. Abdul Gaffoor, Sir Razik Fareed, Mr. M. L. M. Mohamed, and Mr. A. R. M.
Mukthar are some of the members of the Jama'ath. Those who regularly
attend the Mosque are enrolled as members. I maintain a book of accounts
from 1948. Meetings of the Jama'ath are held once in a way. Mr. A. M.
Thameem is the Secretary of the Jama'ath. Mr. A. L. M. Haniffa is now the
President.

Mr. Shahul Hameed became trustee in 1940 on the death of his father
Mr. Kolande Marikar. Mr. Ishak became trustee on the death of his father
20 Mr. Nilamdeen. The trustees have always been male descendants of
Mamuna Pillai. The trusteeship has always been decided on the Lorenz
Award and Samarawickrema Award. I also rely on several D.C. cases
where we three and our fathers and ancestors have been recognised as
trustees of the Mosque. Since 1857 by custom and law three persons in
the family have been appointed as trustees. I have never been found
guilty or convicted in respect of the properties vested in the trustees. I
know one Mr. Abdul Cader. He has given the trustees trouble from 1920.
He has also gone to jail. He tried several times to oust us from the post of
trustees. Mr. Pope was appointed Receiver of the till boxes in 1937.
30 Mr. Pope did not have any rents to collect other than the till collections.
Mr. Abdul Cader once hit him with a bottle when he came to take the col-
lections of the tills. Except Mr. Abdul Cader, no one else has disputed our
claims to trusteeship.

The numbers of the Shrine and the Mosque are Nos. 14 and 12. No. 12 is
the Mosque and No. 14 is the Shrine. No taxes are paid. Nos. 10, 10A, 12,
10C, 16B, 16A, 18, 14/2, 14/2A, 14/3, 14/4, 14/5, 14/6, 14/7, 14/8 and 14/9 Bap-
tist Chapel Road, are the premises. The houses are from No. 14/2 to 14/9 Bap-
tist Chapel Road. The occupants of all the tenements Nos. 14/2 to 14/9 are
the relations of the three trustees. No rents are collected from the houses.

40 All the boutiques and the shops have been leased out by the three
trustees of the Mosque. The land on which the Mosque, Shrine, shops etc.,
are situated was obtained from Government in exchange for another piece
of land for the purpose of the Mosque. The land on which the tenements
have been put up was obtained from Government by Packirthamby Cassim
Bawa by Deed No. 28688 of 30-12-1891. On the original Crown Grant the
land on which the Mosque, Shrine and the boutiques stand and on the second

P 9
Evidence given by
the 2nd Defendant
(A. R. M. Rauff)
before the Wakfs
Board —
30-5-59
—Continued.

Crown Grant the land on which the tenements stand. There are no documents to say that the land on which the shops and the houses are situated are Wakf property. The extent of the Wakf property has not been stated in any of the documents.

In D.C. Special 256 the issue was not whether the property was Wakf or not. The main issue was trusteeship. We spend the income from the shops, boutiques etc., for the benefit of the Mosque. Taxes are not paid in respect of the Mosque and Shrine, but taxes are paid for the boutiques. The lessees pay the taxes for the boutiques. The taxes on the houses are met from the collection in the till. When we are short of funds, we utilize Mosque 10 money to pay taxes for the houses and later on reimburse mosque funds.

The income of the Mosque are from till collections, offerings of cattle, fowls, oil etc. The expenditures are salaries paid to employees, repairs, light bill, expenses in respect of the Madrasa, Charities, and Burdha Kandoori every Friday for 12 people. ”

At this stage Mr. Marcany admits that Mr. Ishak, Chief Trustee on behalf of the other trustees wrote the letter dated 26-10-58 to the Commissioner. He also states that the facts and the particulars given in the letter dated 26-10-58 sent by Mr. Ishak to the Commissioner are true.

Mr. Rauff continues :—

20

“ Taxes are paid from Mosque funds for some houses. The tenements belong to us, and we have not leased it to anyone. We leased the boutiques which also belong to us. The Mosque and Shrine belongs to God. We are the trustees of the Mosque. We have no objections to the Mosque and Shrine being registered. The boutiques are being leased out to Mr. Ismail. We, on Deed No. 1392 appointed Mr. Ismail, Administrator of the Mosque. He submits accounts to us and we approve it. All the income of the Mosque belongs to God. No part of the income belongs to us.

The properties referred to, in the second recital of Deed 1392 are the boutiques. On Deed 1392 we authorised Mr. Ismail to collect rents from the 30 boutiques. The monthly income from the till collections must be over Rs. 1,600/-. There are some members of the families who are entitled to be trustees, residing outside the premises Nos. 14/2 to 14/9. If any of the members of the family, even if they reside outside the premises adjoining the Mosque are unable to pay their taxes, their taxes will be paid out of the mosque funds, in case they are too poor to pay the taxes themselves”.

Mr. Marcany refers to section 14(3) and urges that practice in force and that terms of any Wakf instrument be carefully considered before appointment of trustees.

“ The house I live in was mortgaged to Mariambeebe for Rs. 3,000/-. ” 40

Certified Correct.

(Sgd.) T. DURAIRATNAM.
Secretary/Wakfs Board.

(Sgd.) T. DURAIRATNAM
*for Commissioner for Mosques
& Muslim Charitable Trusts.*
13-2-61.

Extract from the Register of Mosques for the Administrative District of Colombo

REGISTER OF MOSQUES FOR THE ADMINISTRATIVE DISTRICT OF COLOMBO

P 4
Extract from
the Register of
Mosques for the
Administrative
District of
Colombo —
22-8-59

| 1 File No. and Date of Registration | 2 Name of Mosque, Shrine or Place of religious resort | 3 Where Situated :— (place, Post Office, Railway Station) | 4 Name of Trustee or Trustees and their addresses | 5 Number of persons in the Jama'ath | 6 Particulars of any Trust instrument relating to the Mosque, Shrine, &c. | 7 Particulars of movable or immovable properties belonging to or appropri- ated to the use of the Mosque, Shrine, &c. | 8 Particulars of movable or immovable properties held in Trust or in the name of any persons exclusively for the benefit of the Mosque, Shrine, &c. | 9 Particulars of rents, income and profits of such properties (vide columns 7 & 8) | 10 Name and Address of Bank where income is deposi- ted | 11 Particulars of Educational Institutions managed by the Mosque | 12 How Income is expended | 13 Order of the Wakfs Board |
|---|--|--|--|--|--|--|--|--|---|---|---|--|
| R/334/ E. 37 22-8-59 | Dewatagaha Mosque & Shrine, Baptist Chapel Road, Colombo 7 | No. 14 & No. 12 Baptist Chapel Road, Colombo 7 | Ibrahim Lebbe Mohamed Thoufeek, 26, First Mosque Lane, Colombo | | 1. Deed No. 2665 of 15-7-1857 S. L. Cassim- thamby N.P. 2. Crown Grant 28688 of 30-12-1891 | All immovable properties within the following boundaries : East : Baptist Chapel Road. North : Baptist Chapel South & West, Colombo Municipal Printing Offi- ce. The properties in- clude the following build- ings. No. 18 Baptist Chapel Rd., Colombo 7 No. 16 —do— No. 16A —do— No. 16 B —do— No. 14A —do— No. 10 —do— No. 10B —do— No. 10C —do— No. 10A —do— No. 8 —do— No. 14/2 —do— No. 14/2A —do— No. 14/3 to 14/7 —do— No. 14/9 —do— | | Nos. 18 & 16 leased for Rs. 3,000/- Lease expires in 1960. No. 16 A About Rs. 55/- p.m. No. 16B leased for Rs. 4,000/- and further sum of Rs. 3,000/- was taken by Mr. N. M. Ish- ak. No. 10A. Rs. 100/- p.m. No. 10 leased at Rs. 6/- p.m. All leases were given by former persons in charge M/s. N. M. Ishak and A. R. M. Rauff. | | Arabic School con- ducted on the mosque premises. | Expenses on grand feast, payment of taxes on build- ings, light bills, employees' sala- ries expenses of person in char- ge etc. | Board decided to re- gister this Mosque & Shrine bounded as follows : East : Baptist Cha- pel Road, North : Baptist Chap- el South and West : Colombo Municipali- ty Printing Office. Board appointed Mr. I. L. M. Thoufeek as trustee till 31-12-59 in the first instance. Mr. I. L. M. Thoufeek was re-appointed trus- tee from 1-1-60 — 31-12-60 vide deci- sion of Board on 29-12-59 Mr. I. L. M. Thowfeek was reappointed from 1-1-61 to 31-12-61 vide decision of Board on 28-12-60 |

Certified correct.

(Sgd.) T. DURAIRATNAM
for Commissioner for Mosques & Muslim Charitable Trusts.
13-2-61.

Decisions of The Wakfs Board

5th September, 1959

The Trustee, Mr. I. L. M. Thoufeek applied to the Board for permission to sue Messrs. N. M. Ishak, A. R. M. Rauff and C. M. Shahul Hameed for the recovery of the properties scheduled hereunder :—

Dewatagaha Mosque and Shrine and all properties movable and immovable within the following boundaries :— East : Baptist Chapel Road ; North : Baptist Chapel ; South and West : Colombo Municipal Printing Office inclusive of—

10

- (a) Shrine No. 14, Baptist Chapel Road, Colombo 7
- (b) Mosque No. 12, Baptist Chapel Road, Colombo 7
- (c) Boutiques Nos. 8, 10, 10A, 10C, 16, 16A, 16B, and 18 Baptist Chapel Road, Colombo 7.
- (d) Tenements Nos. 3, 5, 7, 9, 14/2, 14/2A, 14/3, 14/4, 14/5, 14/6, 14/8 and 14/9, Baptist Chapel Road, Colombo 7.

The Board as required in section 25(1) of the Wakfs Act granted such approval. Mr. Thoufeek was also granted approval to sue for any other purposes connected with or incidental to the exercise and performance of his powers and duties of trustee.

20

14th November, 1959

The trustee may be requested to seek legal advice in respect of the rents due from tenants of the boutiques and houses.

28th November, 1959

It was suggested that the Commissioner should call up Mr. Thoufeek and advise him regarding the payment of moneys to the Lebbe for reciting fathihās etc., and to see that the present arrangements are not disturbed for sometime. Mr. Thoufeek should also be asked to address the Board at its next meeting regarding the progress he has made in respect of this Mosque.

With regard to Mr. A. R. M. Rauff's request for copies of the proceedings in respect of the inquiry into affairs of the Dewatagaha Mosque, it was decided to issue him copies of his statement only and inform him that the statements of the other witnesses cannot be made available to him. He may also obtain on payment, copy of the particulars of this Mosque as appearing in the Register of Mosques.

P 6
Decisions of
the Wakfs
Board.
—Continued.

The Board decided to inform Mrs. Ishak with reference to her representations made to the Board, that the Board regrets it cannot vary its decision.

29th December, 1959

10 It was decided to re-appoint Mr. I. L. M. Thoufeek from 1-1-60 to 31-12-60. The applications of the other persons will be considered after the properties belonging to this Mosque and Dharga have been secured to the Mosque and Dharga.

20th February, 1960

With reference to the Scheme of Management submitted by Mr. M. I. M. Haniffa it was decided not to vary the earlier decision of the Board. The Commissioner brought to the notice of the Board that Messrs. Ishak and Rauff met him on 19-2-60 and wanted to pay the 25% tax to the Muslim Charities Fund. After considering this matter, it was decided to refuse
20 acceptance of the payment of the tax to the Muslim Charities Fund from any person other than the Trustee.

30th April, 1960

The question of advancing moneys to Mr. Thoufeek for purposes of cases connected with the trusteeship dispute was discussed. It was felt that any advance on the Muslim Charities Fund would not be an appropriate charge on the Fund. Mr. Thoufeek's accounts as on 3-2-60 and previous accounts were tabled and admitted as correct.

(Sgd.) T. DURAIRATNAM

Certified Correct

30 (Sgd.) T. DURAIRATNAM,
for Commissioner for Mosques &
Muslim Charitable Trusts.

13-2-61.

P5
Letter of
Appointment of
I. L. M. Thoufeek
as Trustee of the
Dewatagaha
Mosque and
Shrine —
26-1-61.

**Letter of Appointment of I. L. M. Thoufeek as Trustee of
the Dewatagaha Mosque and Shrine**

No. R/334/C. 37
Colombo 3. 26th January, 1961.

**REGISTRATION OF MOSQUES & APPOINTMENT OF
TRUSTEES**

The Wakfs Board has been pleased to register the Dewatagaha Mosque and Shrine situated at Cinnamon Gardens, Colombo 7 in terms of Section 13 of the Muslim Mosques & Charitable Trusts or Wakfs Act, No. 51 of 1956. 10

The Board has also been pleased in terms of Section 14 of the said Act to appoint I. L. M. Thoufeek Esqr., as the Trustee one of the Trustees of the said institution with effect from 1st January, 1961. The other trustees of this institution are

The Trustee will function for the period ending 31st December, 1961.

(Sgd.) M. Z. MOHIDEEN
*Commissioner for Mosques &
Muslim Charitable Trusts.*

Department of Mosques & Muslim Charitable Trusts,
P. O. Box 543.
365, Galle Road,
Colombo 3.

20

Certified correct.

(Sgd.) T. DURAIRATNAM
13-2-61.
*for Commissioner for Mosques &
Muslim Charitable Trusts.*

Supreme Court of Ceylon,
No. 146 (Final) of 1961.

District Court of Colombo,
Case No. 837/zl.

In Her Majesty's Privy Council

on an Appeal from

The Supreme Court of Ceylon

BETWEEN

1. NILAMDEEN MOHAMED ISHAK, and
- (Dead) 2. ABDUL RAHMAN MOHAMED RAUOOF, both of
Dewatagaha Mosque, Baptist Chapel Road,
Colombo 7.
3. M. R. M. SIDDEEK, of No. 14/4, Baptist Chapel
Road, Colombo, (substituted in place of the 2nd
Defendant-Appellant who is dead).

(Defendants-Appellants)
Appellants.

AND

1. IBRAHIM LEBBE MOHAMED THOWFEEK of
No. 26, 1st Mosque Lane, Colombo 12.

(Plaintiff-Respondent.)

2. COLONDA MARIKAR SHAHUL HAMID of
No. 180/11, Maligawatta Road, Colombo 10.

(Defendant-Respondent.)
Respondents.

RECORD
OF PROCEEDINGS
