

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the appeal of Meenakshi  
Naidoo v. Subramaniya Sastri from the High  
Court of Judicature at Madras; delivered  
Thursday, June 16th, 1887.*

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Present :

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD BAGGALLAY.

SIR RICHARD COUCH.

THIS is an appeal against an order of the High Court of Madras, which cancelled an order of the District Judge of Madura appointing the present Appellant to fill up a vacancy in the committee of a Pagoda in the Madras Presidency.

The appointment was made by the District Judge under the provisions of section 10 of Act XX. of 1863, entitled "An Act to enable the Government to divest itself of the management of religious endowments," and commonly known as *the Pagoda Act*. By that Act it was provided that the local government should appoint one or more committees in every division or district to take the place, and to exercise the powers of, the Board of Revenue and the local agents, under the regulations thereby repealed, that the members of such committees should be appointed from among persons professing the religion for the purposes of which the temple, or other religious establishment, was founded or should be maintained, and in accordance, so far as could be ascertained, with the general wishes of those who were interested in the maintenance of such temple or religious establishment, and

that the appointments should be for life; section 10 provided for supplying vacancies in the following terms: "Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided. The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested, as above provided, under rules for elections which shall be framed by the local government, and whoever shall be then elected under the said rules shall be a member of the committee to fill such vacancy. If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy, or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and if this order be not complied with the Civil Court may appoint a member to fill the said vacancy."

The interpretation clause provided that the expression "Civil Court" should mean the principal court of original civil jurisdiction in the district in which the temple was situated.

The committees appointed under the Act appear to have varied in number; in the case under consideration a committee of five was originally appointed. There had been changes from time to time, and, on the 5th September 1880, Gurusami, one of the then five members of the committee, died.

The period of three months expired on the 6th December 1880, and several applications were thereupon made to the District Judge at Madura to take such course as he might deem advisable. He accordingly issued a notice that, unless an election was held before the end of the year, he would take the matter into his own hands. An election did in fact take place on the 28th December 1880, and at such election, tellers, appointed by the District Judge, attended and reported to him the result; the present Appellant obtained the largest number of votes, and by an order of the district Judge, dated 10th February 1881, was appointed to fill the vacancy in the committee. As the three months from the death of Gurusami had expired before the election, the power and the duty of appointing his successor had devolved upon the District Judge; the object of the Judge, in permitting an election to take place after the expiration of the three months, was, as he states, to satisfy his own mind as to who would be the proper person for him to select.

The Judge having appointed the Appellant on the 10th of February 1881, a petition of appeal was presented to the High Court by persons, who were either interested as candidates, or were in favour of other candidates. The substantial grounds of the appeal were that the Madura Temple was devoted to the worship of Siva, and that the present Appellant was a Vishnuvite. The High Court, agreeing with the Petitioners, discharged the order of the District Judge.

From that order of the High Court the present appeal is brought; and the question has now been, for the first time, raised whether the High Court had jurisdiction to deal by way of appeal with the order of the District Judge. It should be mentioned that after the High Court had

decided adversely to the present Appellant; a petition of review was brought before that Court, and they declined to further interfere. During the proceedings in the High Court it was never suggested that that Court had no jurisdiction to deal with the question until an application was made for leave to appeal to the Queen in Council, when it was inferentially stated; it was, however, then too late for the High Court to entertain the question.

On the 4th March 1884, leave was given to the Appellant by Her Majesty in Council to enter and prosecute his present appeal.

When the appeal was opened, it appeared to their Lordships desirable that the question of the jurisdiction of the High Court to entertain an appeal from the order of the District Judge should be first taken into consideration, as, if that objection should prevail, it would be unnecessary to go into the disputed questions by which the merits of the case were surrounded; and with the question of jurisdiction alone their Lordships now propose to deal.

In approaching the consideration of this question, their Lordships cannot assume that there is a right of appeal in every matter which comes under the consideration of a judge; such right must be given by statute, or by some authority equivalent to a statute. The first question which arises in the present case is, whether any right of appeal is given by the Pagoda Act itself. There is nothing in the Act which would suggest it, unless it is to be found in section 10, to the terms of which their Lordships have already referred. Sections 14 to 20 of the Act provide for the interference of the Court by way of suit in certain cases, but they are entirely limited to cases which may be classified as breaches of trust or neglect of duty. There is no other provision whatever for the institution of suits in the

Pagoda Act itself. In the opinion of their Lordships the 10th section places the right of appointing a member of the committee in the Civil Court, not as a matter of ordinary civil jurisdiction, but because the officer who constitutes the Civil Court is sure to be one of weight and authority, and with the best means of knowing the movements of local opinion and feeling, and one can hardly imagine a case in which it would be more desirable that the discretion should be exercised by a person acquainted with the district and with all the surroundings. The exercise of the discretion being so placed in the District Judge their Lordships are unable to find anything in the 10th section which confers a right of appeal.

It has however been suggested that, though there may be no right of appeal under the Pagoda Act itself, yet a right of appeal must be found in the general law, and their Lordships' attention has been particularly directed to the 540th section of Act X. of 1877, which gives a general right of appeal from decrees of Courts exercising original jurisdiction; the jurisdiction conferred by the Code (section 10) is to try suits of a civil nature. The Act of 1877 contained, in its interpretation clause, a declaration of the meaning of the word "decree," as used in that Act, but this interpretation was modified by Act XII. of 1879, and, as modified, the interpretation is as follows :—

“ ‘Decree’ means a formal expression of an adjudication upon any right, claim, or defence, set up in a Civil Court where such adjudication decides the suit or the appeal.” In the opinion of their Lordships there was no civil suit respecting the appointment, and it would be impossible to bring an order made by the District Judge pursuant to section 10 of the Pagoda Act within the definition of a decree as contained in the Code,

and no other general law has been suggested. Mr. Doyne, in the course of his argument, contended that if a person, very improper and unfit by reason of his religious qualifications, or moral conduct, was appointed, there must be a right, either by appeal against the Judge's order, or by suit, or in some other way, to remove the person so appointed. There is force in this argument; but whether a person so improperly appointed could, as has been suggested, be removed by proceedings equivalent to proceedings by *quo warranto* in England, or whether, upon a full consideration of the merits, the Appellant could be considered as a person improperly appointed, are questions upon which their Lordships are not called upon to express an opinion. In their opinion it is clear that there is no appeal from that which was a pure discretion vested in the District Judge.

It has been suggested, and it is not right altogether to pass that suggestion over, that, by reason of the course pursued by the present Appellants in the High Court, they have waived the right which they might otherwise have had, to raise the question of want of jurisdiction. But this view appears to their Lordships to be untenable. No amount of consent under such circumstances could confer jurisdiction where no jurisdiction exists. Upon this point, it may be convenient to refer to the judgement of their Lordships delivered by Lord Watson in the comparatively recent case of *Ledgard v. Bull* (13 Indian Appeals, page 144), as it in very concise terms deals with the circumstances under which there can be a waiver of a right to complain of a want of jurisdiction. Their Lordships say:—"The Defendant pleads that  
 " there was no jurisdiction in respect that the suit  
 " was instituted before a court incompetent to  
 " entertain it; and that the order of transference  
 " was also incompetently made. The District  
 " Judge was perfectly competent to entertain

“ and try the suit if it were competently brought ;  
“ and their Lordships do not doubt that in such  
“ a case a Defendant may be barred by his own  
“ conduct from objecting to irregularities in the  
“ institution of the suit. When the Judge has  
“ no inherent jurisdiction over the subject-  
“ matter of a suit, the parties cannot, by their  
“ mutual consent, convert it into a proper  
“ judicial process, although they may constitute  
“ the judge their arbitrator, and be bound by  
“ his decision on the merits when these are  
“ submitted to him. But there are numerous  
“ authorities which establish that when, in a  
“ cause which the Judge is competent to try,  
“ the parties without objection join issue, and  
“ go to trial upon the merits, the Defendant  
“ cannot subsequently dispute his jurisdiction  
“ upon the ground that there were irregularities  
“ in the initial procedure, which, if objected to  
“ at the time, would have led to the dismissal  
“ of the suit.” In the present case there was  
an inherent incompetency in the High Court to  
deal with the question brought before it, and no  
consent could have conferred upon the High  
Court that jurisdiction which it never possessed.

Having regard to all the circumstances of the  
case, their Lordships will humbly advise Her  
Majesty to allow the appeal, to discharge the  
order of the High Court, and to dismiss the  
appeal to the High Court without costs. There  
will be no costs of the present appeal.

