

Present: Mr. Justice Wood Renton.

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PARANATALE *et al.* v. NUGAWELA.

C.R., Kandy, 3,391.

*Provincial Committee appointed under Ordinance No. 3 of 1889—Power to sue—Expenses incurred in the working of the Ordinance—District Committee—Buddhist Temporalities Ordinance, No. 3 of 1889—Ordinance No. 3 of 1901, section 3.*

A Provincial Committee appointed under the Buddhist Temporalities Ordinance (No. 3 of 1889) has no power to sue for the recovery of any contribution which a temple has become liable to pay, under the provisions of the said Ordinance, for defraying the expenses incurred or to be incurred by the said Committee for the purposes of the said Ordinance.

Such suit must be brought at the instance of the District Committee appointed under the said Ordinance.

THE plaintiffs as the members of the Provincial Committee appointed under the Buddhist Temporalities Ordinance (No. 3 of 1889) sued the defendant as trustee appointed under the said Ordinance of the Dalada Maligawa, Kandy, for the recovery of a sum of Rs. 160, being the sum which the said temple became liable to pay to the plaintiffs under rule 29 of the rules framed under section 3 of 1901, amending the said Ordinance No. 3 of 1889 and published in the *Government Gazette* of the 3rd January, 1902, for the purpose of defraying the expenses incurred and to be incurred by the plaintiffs for the purposes of the said Ordinance No. 3 of 1889.

The defendant pleaded that the plaintiffs were not entitled to maintain this action, and that the proper body to sue was the District Committee appointed under the said Ordinance.

The Commissioner (Mr. J. H. de Saram) held as follows:—

“ This is an action by the Provincial Committee appointed under the Buddhist Temporalities Ordinance against the trustee of the Dalada Maligawa to recover Rs. 160, being the amount assessed by the Provincial Committee to be paid by the Dalada Maligawa for defraying the Committee's expenses for the year 1905. An issue of law has been raised by the defendant. It is whether the plaintiff Committee are entitled to recover the amount claimed or any part thereof.

“ I was asked to decide that issue before considering the other questions involved in the case. Section 36 of the Ordinance No. 3 of 1889 empowered every Provincial Committee to make rules. The Ordinance No. 3 of 1901 in section 3 substituted a section for section 36. The substituted section enacts that—

“ (a) Every provincial committee.....shall select one of their number to be president of such committee and shall make rules—

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“ (b) For assessing the proportion in which each temple within the province shall contribute a share of the expenses incurred or to be incurred in carrying out the provisions of this Ordinance; and

“ (c) For every purpose necessary to the due exercise of their powers and the performance of their duties under this Ordinance.’

“ Rules were framed by the Provincial Committee, Kandy, and were published for general information in the *Government Gazette* of the 3rd January, 1902. The rules which apply to the present action, and on which both parties rely, are the following:—

“ ‘ 29. Each temple shall contribute an amount proportionate to its income for defraying the expenses already incurred or to be incurred by the Committees in carrying out the provisions of the Buddhist Temporalities Ordinances.

“ ‘ 30. Each District Committee shall on or before the 31st day of March in each year prepare and transmit to the Provincial Committee—

“ ‘ (a) Estimates showing the probable receipts of each temple within its jurisdiction for the ensuing year.

“ ‘ (b) Estimates of proposed disbursements for the next ensuing year. The President of the Provincial Committee shall likewise make yearly estimates of the proposed disbursements in his Department, and submit them to the Provincial Committee with the estimates of the District Committees.

“ ‘ 31. The Provincial Committee shall carefully revise the estimates laid before them by the District Committees, and shall assess and determine the amounts which each temple shall contribute. The President of the Provincial Committee shall then return the estimates to the respective District Committees, who shall recover from the trustees of the different temples the amount payable by each.

“ ‘ 32. The District Committees shall recover and remit to the Provincial Committee all sums so assessed due by the different temples on or before the 30th day of June in every year. The Provincial Committee shall then remit on application to each of the District Committees the amount sanctioned in the estimates that have been revised and passed.

“ The objection to the action is that the Provincial Committee have no right to institute an action to recover the assessed amount which any temple has to pay for defraying expenses of the Committee in carrying out the provisions of the Buddhist Temporalities Ordinance. It was argued for the defendant that the right to sue is by the rules vested in the District Committee. It was conceded by

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Mr. Barber appearing for the plaintiffs and by Mr. Beven for the defendant that there is no provision in any of the Ordinances giving the Provincial Committee the right to sue. Mr. Beven relied on rules 29 and 31 in support of his argument that the proper Committee to sue is the District Committee.

“ Rule 29 enacts that each temple shall contribute an amount proportionate to its income for defraying the expenses already incurred or to be incurred by the Committees in carrying out the provisions of the Buddhist Temporalities Ordinance. Rule 30 contains the particulars to be furnished by the District Committees to enable the Provincial Committee to carefully revise those Committees' estimates. The President of the Provincial Committee is by the same rule empowered to make yearly estimates of the proposed disbursements in his department, and submit them to his Committee.

“ This estimate does not require revision by the Provincial Committee, for it is their own estimate made by their President. The next rule (31) then enacts what is to be done with the estimate transmitted by the District Committees. The Provincial Committee carefully revise them and assess and determine the amounts which each temple shall contribute. Thereupon the Provincial Committee is required to return the estimates—that is to say, the revised estimates of the District Committees and the estimate made by the President of the Provincial Committee—to the respective District Committees, who shall recover from the trustees of the different temples the amount payable by each. Then rule 32 enacts that the District Committees shall recover and remit to the Provincial Committee all sums so assessed due by the different temples on or before the 30th of June in every year. The Provincial Committee shall then remit on application to each of the District Committees the amount sanctioned in the estimates that have been revised and passed, that is to say the amounts assessed in respect of each District Committee.

“ Mr. Barber laid stress on the word return in rule 31, and argued that it means that the Provincial Committee shall return to the District Committees the estimates transmitted by them, that the Provincial Committee should retain their estimate, and that the District Committee should recover the amounts assessed in respect of each of them.

“ This rule may not be worded as happily as it might have been, but it is clear to my mind on reading rules 31 and 32 that they enact that the District Committees are to recover all the amounts assessed in respect of both the Provincial Committee and the District Committees, and, after recovery, remit the whole sum to the Provincial Committee, who would retain all sums assessed in respect of that

Committee, and pay over to each of the District Committees the amount sanctioned in the revised estimates which have been passed.

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“ Both Mr. Barber and Mr. Beven agreed that the word ‘recover’ in rules 31 and 32 means recover by action where such a course is necessary. It was never intended that this right to sue should be vested in the Provincial Committee and in each of the District Committees, and so give rise to multiplicity of actions and thereby entail unnecessary expense.

“ I am of opinion that the proper body to sue is the District Committee, and that the Provincial Committee have no right to maintain this action. I therefore answer the issue of law in the negative, and dismiss this action with costs.”

The plaintiffs appealed.

*H. Jayewardene* for them.—It is submitted that the Provincial Committee can sue for expenses incurred by them. [WOOD RENTON J.—The statute does not empower them to sue.] But where there is a right in them to a certain sum of money, the right to sue is implied. [WOOD RENTON J.—Where a statute intends that any corporate body should sue it expressly gives such power; and the District Committee is specially authorized to sue by the Ordinance.] That is so; the District Committee has been given express authority, because some doubt may arise as to their right to sue in consequence of the existence of the Provincial Committee. If the Provincial Committee recover the money, the District Committee cannot sue for it again.

*Allan Drieberg*, for the respondent, was not called upon.

WOOD RENTON J.—

I think the judgment of the Commissioner is right and should be affirmed with costs.

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