

1920.

*Present* : Bertram C.J. and Schneider A.J.

RATWATTE *v.* RATNAIKE.

44—D. C. (Inty.) Kandy, 27,189.

*Claim in reconvention—Allegation by plaintiff that defendant had no right to dismiss him—Prayer that plaintiff might be declared Basnayake Nilame—Answer of defendant that dismissal was legal—Claim in the alternative that the plaintiff should be dismissed by Court.*

The plaintiff claimed to be the Basnayake Nilame of the Kataram Dewale. He denied the right of the defendant to dismiss him from that office, and prayed that, he might be declared the Basnayake Nilame of the Dewale, and also asked for an injunction and for damages.

The defendant in his answer maintained that the dismissal was legal, and prayed in the alternative that, if there was any defect in the dismissal, the Court itself should remove the plaintiff from his office.

*Held*, that it was competent for the defendant to claim in reconvention that the plaintiff should be dismissed from his office.

**T**HE facts appear from the judgment.

*A. St. V. Jayawardene*, for the appellant.

*H. J. C. Pereira*, for the respondent.

August 3, 1920. BERTRAM C.J.—

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This is an appeal from an order of the District Judge of the Kandy District Court directing in the course of action that a particular issue should be added to those already settled. The action was brought by the plaintiff, who claimed to be the Basnayake Nilame of the Kataragam Dewale at Kandy. He complained that the defendant, purporting to act as President and Secretary of the Kandy District Committee, had summoned the plaintiff before him by a notice, which was so framed and served as to give him no opportunity of appearing, and he thereupon purported to dismiss the plaintiff from his office of Basnayake Nilame. The plaintiff denied the right of the defendant to dismiss him. He further complained that the defendant inserted a paragraph in a newspaper announcing that he had been dismissed, thus causing a loss of prestige and reputation of the plaintiff, and he prayed that he might be declared the Basnayake Nilame of the Dewale. He also asked for an injunction and for damages.

After the answer was delivered a further cause of action was alleged, and a paragraph was added, alleging that a further paragraph had been published in the public press which was of a defamatory nature, with regard to the matters to which I have previously referred. In his answer the defendant justified his dismissal of the plaintiff, maintained that the dismissal was perfectly legal, prayed for the dismissal of the action and for the confirmation of the plaintiff's dismissal from his office as Basnayake Nilame, and prayed in the alternative that, if there was any defect in the dismissal, the Court itself should remove the plaintiff from his office. The answer also in reconvention prayed for damages.

The point which we have to decide is whether in answer to such a claim it is competent for the defendant to claim in reconvention that the plaintiff should be dismissed from his office. That claim in reconvention is based upon section 39 of the Buddhist Temporalities Ordinance, No. 8 of 1905, under which any person interested in the temple or in the performance of the worship or of the service thereof may sue any trustee in respect of any misfeasance, breach of trust, or neglect of duty, and may claim the removal of the trustee from his office.

It is urged by Mr. Jayawardene that this claim in reconvention cannot properly be tried in connection with the present action. He cites as his authority for that proposition the case of *Silva v. Perera*,<sup>1</sup> and in particular the passage from *Kotze's Van Leeuwen*, which is quoted in the course of the judgment in that case. I do not think that passage in *Van Leeuwen* ought to be too narrowly construed. The principle which those words lay down is, no doubt, unexceptionable, and is accepted as part of the law of this Colony, that is to say,

<sup>1</sup> (1914) 17 N. L. R. 206.

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that where a claim in reconvention is made, the thing claimed must be of the same right, kind, and quality as the matter claimed in convention. But on any reasonable construction of those words, it seems to me that the present case falls with them.

The main claim in the action is that the plaintiff be declared the Basnayaka Nilame of the Kataragam Dewale. His principal complaint is that the defendant has purported to depose him from his office. It does not seem to me unreasonable that the defendant should reply, in the first place, justifying the defendant's dismissal, and claiming that he was legally dismissed in pursuance of the powers alleged to be vested in the defendant, and that he should further pray that, if it should appear by reason of some defect of procedure the dismissal was not a lawful dismissal, the Court in the exercise of its powers under section 39 should itself remove the Basnayake Nilame from his office. It will probably be necessary, when the Court investigates the action, to refer to the complaints on which the Basnayake Nilame was dismissed, and it would be certainly the most convenient course that the complaints made against this gentleman should be investigated in the action which he himself brings before the Court. At the same time, it is obvious that the particulars of the alleged misfeasance and acts of misconduct with which the plaintiff is charged are no particulars at all. The District Judge has not accepted them as particulars. He has merely made an order that a certain issue shall be added to those already accepted. That issue is in general terms. It is "Has the plaintiff been guilty of misfeasance or neglect of duty, and if his dismissal by the defendant be illegal, is he liable to dismissal by decree of Court?"

It is quite clear that, if the plaintiff is to be called upon to answer a charge of this sort, it should be made against him with the greatest definiteness and particularity. The list of so-called particulars which has been filed in the case gives him no sort of information. It is vague and general in its terms. It contains only a single date, and most of the paragraphs simply make use of the phrase "at any time" for the purpose of indicating what it is that is charged against the plaintiff. It would not be proper that a gentleman exercising a public duty should be called upon to meet vague and general charges of this nature. The District Judge will no doubt see, when the matter comes up before him again, that all charges that the defendant has to make against the plaintiff are specified with the fullest particularity.

For the reasons I have explained, I am of opinion that the appeal should be dismissed, with costs.

SCHNEIDER A.J.—I agree.

*Appeal dismissed.*