

Present : Wood Renton J.

1912.

YATAWARA v. PABILIS SINGHO *et al.*

27—C. R. Kandy, 5,496.

Buddhist Temporalities Ordinance, No. 8 of 1905, s. 34—Appointment of provisional trustee—Appointment good only for a reasonable time.

The appointment of a provisional trustee is an appointment good for such period only as may be reasonably necessary before a new trustee can be elected.

THE facts appear in the judgment.

H. A. Jayewardene, for appellant.

J. W. de Silva (with him *Canekeratne*), for respondents.

Cur. adv. vult.

February 28, 1912. WOOD RENTON J.—

The plaintiff-appellant, alleging himself to be the Basnaike Nilame and trustee of the Maha Dewale, Kandy, sued the defendants-respondents, who are admittedly nilakaraya tenants of certain lands belonging to the temple, for the recovery of a sum of Rs. 151.73, the value of services which he alleged they were bound to perform, and in the performance of which they had made default. The defendants-respondents filed answer denying, *inter alia*, the appellant's title to sue. When the case came on for trial their counsel took the preliminary objection—a basis for which had been laid by the answer—that the appellant had no status in Court. The appellant's counsel contended that this issue did not arise out of the pleadings, but the Commissioner of Requests over-ruled this objection, and I think rightly. The learned Commissioner of Requests then called upon the appellant to prove his title to sue. The appellant's counsel stated that he was not prepared to present such proof at the moment. The Commissioner thereupon questioned the appellant himself, and the appellant admitted that he had not been elected at any meeting convened for the purpose, but had only been provisionally appointed by the District Committee as far back as July or August, 1910. "No successor to Mr. Ratwatte" (the former permanent trustee, who had been dismissed by the Committee in July, 1910) "had," said the appellant, "since been elected," as he had a case then pending against the District Committee attacking their status and claiming damages for wrongful dismissal." The appellant added that he had been temporarily appointed and put in possession of the dewale under a writ of the Court of Requests, Kandy.

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On these admissions the learned Commissioner of Requests had to determine whether or not the appellant had then a good title to sue, and the view that he took of this question may be shortly stated thus. Section 34 of "The Buddhist Temporalities Ordinance, 1905," provides—I will take only the relevant clause—that, in the case of the dismissal of any trustee, another trustee shall be "forthwith" elected in his stead in the manner provided by section 17. That is the substantive enactment of which section 34 consists. There follows, however, a proviso that in the case—here, again, I am not quoting the very words of the section—of the dismissal of any trustee, it shall be competent for the District Committee to make provisional arrangements for the performance of the duties of the office pending "the election" of a successor, and that any person who may be provisionally appointed to act as trustee shall have all the powers and be liable for all the duties of a trustee elected under the Ordinance. The Commissioner of Requests held in substance that the powers of a provisional trustee exist only pending the election of a new trustee "forthwith"; that the delay on the part of the District Committee to elect a new trustee in the present case had been unreasonable; and that, therefore, the appellant had no title to sue. No authority has been cited to me that bears on the interpretation of the proviso to section 34 in regard to the point as to which I have now to construe it, and I am not aware of any such authority. But I think that the view taken by the Commissioner of Requests is right. It was clearly open to the defendants-respondents to dispute, as they did dispute, the appellant's title to sue. It was open to the appellant to make, as he did make, at the trial admissions which placed the Court in possession, so far as he was concerned, of all the material facts in regard to his status. With the respondents' denial of the appellant's title before it, and the appellant's own admissions, the Court was bound in the present case to consider and decide the question of his *locus standi*. The interpretation put by the learned Commissioner of Requests on section 34 is, I think, right. The appointment of a provisional trustee is an appointment good for such period only as may be reasonably necessary before a new trustee can be elected. The word "election" in the proviso to section 34 throws us back on the substantive part of that enactment, which makes it clear that the election contemplated is an election "forthwith." The Commissioner of Requests was entitled, and bound on the pleadings, to decide the question whether there had been an election "forthwith" in the present case. The appellant himself supplied the Court with materials which show that that question must be answered, as against him, in the negative, and that being so, it appears to me that he had no power to bring the present action.

The appeal is dismissed with costs.

Appeal dismissed.