SITHAMBARAM v. PALANIAPPA.

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D. C., Colombo, 16,768.

Voluntary association formed for worship of a god and for acquiring property to be dedicated to religious use—Dispute between members of the association—Refusal of one faction to permit the other to join in worship and administration of the property—Action for restoration of rights and injunction pendente lite—Delay of plaintiffs to come into court after rise of dispute.

Where a dispute arose between members of a voluntary association formed for the worship of a god and for acquiring property to be dedicated to the temple and for managing its affairs, and one faction was alleged to have refused in July, 1901, to permit the other to join in the worship and administration of the property belonging to the temple, and an action was raised in May, 1902, praying that the plaintiffs may be declared jointly with the defendants entitled to worship in the said temple and administer its affairs, and that an injunction may be allowed restraining the defendants and their agents and servants from impeding the plaintiffs and their agents and servants from entering and worshipping in the temple and administering its affairs, pending the decision of the case,—

Held, that the delay of the plaintiffs to come into court ten months after the rise of the dispute disentitled them to the *ad interim* injunction prayed for, so as to interfere before final decree with the course of the defendants' conduct.

ON the footing of the following plaint, instituted on the 6th May, 1902, the plaintiffs moved for an injunction against the defendants.

The plaint ran as follows:—

1. The plaintiffs and the defendants are residents at Sea street in Colombo within the local limits of the jurisdiction of this Court, and comprise all the members of the voluntary association of Nattu Kotte Chetties called Pudukovil Nagaram, which, has been in existence since the year 1850, and was formed with the object of perpetuating the worship of the god Kadirasen, and acquiring movable and immovable property to be dedicated to religious use connected with the worship of the said god for the common benefit of the members of the said association.

2. The two temples known as Pudu Kadirasen Kovil, situated at Sea street in Colombo and at Wellawatta, were built since the fomation of the said association with moneys collected from the members of the said association, and by usage amongst them has been dedicated to, and used for the worship of, the said god.

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3. Divers lands and houses at Wellawatta and at Sea street, as well as large quantities of gold and silver ornaments, have also from time to time been purchased with the moneys collected as aforesaid for the use and benefit of the said temples.

4. A gold and silver car, to be used in connection with the customary religious festivals that are from time to time celebrated at the said temples, has been recently purchased in India at a cost of Rs. 30,000 with the moneys collected as aforesaid, and the said car is expected to arrive in Colombo shortly, when it is to be taken in solemn procession from the said temple at Sea street to the said temple at Wellawatte at the customary festival, which is to take place in the month of July next.

5. Since the acquisition of the said lands and the buildings of the said temples all the members of the said association have had, as they still have, the common right and privilege to worship at the said temples, and to join and to contribute to and to take an active part in all religious festivals in connection with the temples, and the right to be summoned to and to attend all meetings in Colombo in connection with the management of the affairs of the said temples, the investment and disposal of the funds of the said temples, the regulation of all matters connected with the preparation for and celebration of the aforesaid festivals, as well as all other matters and things relating to or connected with the said temples or the property thereto belonging.

6. Owing to a recent dispute between the plaintiffs and the defendants, the defendants have wrongfully taken exclusive possession of the said temples, as well as all and singular the lands and tenements (save and except two houses at Sea street), the gold and silver ornaments, and all other property belonging to the said temples as aforesaid; and have placed persons in the said temples, and now keep them there, to prevent the plaintiffs from worshipping therein, and to resist by force, if need be, the entry of the plaintiffs or any of them into the said temples, and have prevented and do prevent the plaintiffs or any of them from entering therein; and the defendants are concerting measures, without calling the usual meeting of members hereinbefore referred to, for the sole and exclusive conduct by and among themselves of the forthcoming annual festival called Chittra Poosai, which is to be held in connection with the said temple at Sea street on the 12th day of May, 1902, and which all the members of the said association have had, as they still have, the common right and privilege to join, to contribute to, and to take an active part in; and the defendants do further threaten to deprive all and each of the plaintiffs of their and his right to co-operate in the preparation for and conduct

of the said festival, or take any part therein whatsoever, to the damage of the plaintiffs of Rs. 5,000.

7. It has been a rule, binding by common consent on all the members of the said association since the year 1850, that no funds subscribed by the members of the said association for religious purposes therewith connected shall be applied to any purpose whatsoever without the united consent of *all* the members of the said association expressed at a meeting for that purpose convened, and that no moneys should at any time be borrowed for such purposes without such united consent as aforesaid.

8. The defendants have, contrary to the said rule, borrowed large sums of money and expended the subscribed funds as well as the borrowed funds of the said association in connection with the purchase of the said car, and for divers religious festivals and otherwise during the past ten months without such common consent as aforesaid, and have further declared their intention, contrary to the said rule, to apply such funds to the said festival in May and the customary bi-annual festival in July, 1902, without such common consent, the said funds being presently in the possession and control of the defendants or some one of them.

9. The value of the said temples and the immovable and movable property thereto belonging as aforesaid, from which the plaintiffs are excluded, and which they are debarred from enjoying as aforesaid, is of the value of Rs. 100,000, and the said property is all situated at Colombo within the jurisdiction of this Court.'

Wherefore the plaintiffs pray—

1. That the plaintiffs, as members of the said voluntary association, may be declared, jointly with the defendants, entitled (*a*) to worship in the said temple; (*b*) to join and to contribute to and to take an active part in all religious festivals and ceremonies connected with the said temples; (*c*) to be summoned to and to take part in and vote at all meetings of the said association; (*d*) to the custody and care of the movable and immovable properties belonging to the said temples; (*e*) to borrow moneys, receive subscriptions and donations, and from time to time to make disbursements in connection with the said temples, and to purchase property for the use and benefit of the said temples.

2. That the defendants, their servants, and agents be restrained from impeding the plaintiffs or any of them from entering and using the said temples for any purpose connected with the said objects of the said association, and specially the said festivals on the 12th May, 1902, and in the month of July, 1902.

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3. That the defendants be restrained from taking any steps towards the celebration of the festivals and the removal of the said car in procession to the exclusion of the plaintiffs.

4. That the defendants be restrained from applying the funds of the said association in their possession, custody, or control, or any part thereof, to the said festivals, or from expending the same in connection with the management or otherwise of the said temples without the common consent of the plaintiffs and the defendants.

5. The plaintiffs further pray for an interim order restraining the defendants, their servants, and agents from impeding the plaintiffs or any of them from entering and using the aforesaid temples for any purpose concerned with the objects of the said association, and specially the said festivals on the 12th day of May, 1902, and in the month of July, 1902, and from taking any steps towards the celebration of the said festivals or the removal of the said car to the exclusion of the plaintiffs, and from taking any steps in the preparation for and conduct of the said festivals without summoning each of the plaintiffs to a meeting to settle the preparation, conduct, and observance of the said festival, and from applying the funds of the said association in their possession, custody, or control, or any part thereof, to the said festivals without the common consent of the plaintiffs and defendants, and from expending the same in connection with the management or otherwise of the said temples without such consent.

6. That the plaintiffs also pray that the defendants may be jointly and severally condemned to pay to them the said sum of Rs. 5,000 as damages.

The defendants appeared when plaintiffs moved for summons and injunction and showed cause. The District Judge (Mr. D. F. Browne) heard counsel for both sides, and allowed " an interim " order restraining the defendants, as prayed in paragraph 5 of the " plaint, until the hearing and decision of the application for the " interim injunction."

On a subsequent day counsel for plaintiffs moved on the materials already before the Court for an interim injunction *pendente lite*, in terms of paragraph 5 of the plaint, plaintiffs undertaking to be answerable in all damages.

Counsel for defendants having examined the deponent of the affidavit filed by plaintiffs, the District Judge allowed the interim injunction by the following order on the 12th May:—

" If I have apprehended the chief points of the contention of the counsel for the defendants, they are that the plaint does not

disclose any cause of action that it avers one right of a religious character—to worship in the temple—and four rights of matters of a non-religious character, viz. (to quote para. 5 of the plaint), to join and to contribute to and to take an active part in all religious festivals in connection with the temple; to be summoned to and to attend all meetings at Colombo in connection with the management of the affairs of the temple; the regulation of all matters connected with the preparation for and celebration of the aforesaid festivals, as well as all other matters and things relating to or connected with the temple or the property thereto belonging. The latter might be precised into—to manage in Nagaram or general meetings the affairs of the temple in general; to prepare for religious festivals; and to take an active part in the festivals themselves.

"And the counsel for the defendants says that the plaint and its cause of action are defective in not specifying whereon any such right is founded, whence it springs; that it mentions no rules, &c., of the Nagaram or any other voluntary association which are a charter of the rights of its members, or a mutual contract between its members, whereon they can claim rights at law to be enjoyed by themselves or to be allowed and obeyed by others. Finally, he drew attention that there is no special legislation here relating to voluntary associations, such as obtains elsewhere, and might, if in force, have been helpful to the plaintiffs' case.

"It appears to me that we may consider these matters in the light of local decisions, which are more or less cognate thereto, viz., as to when a Civil Court here has or has not jurisdiction to interfere in cases involving issues more or less concerning matters ecclesiastical. As regards voluntary associations themselves, I remember only two cases here, and those concerned, I believe, the right of a secretary to recover subscriptions. The later decisions as regards this point of jurisdiction are, I believe, those reported in *2 S. C. R. 354, 1 N. L. R. 354, and 2 N. L. R. 30*, in the latter of which Bonser, C.J., pointed out that the principles of law governing the case were stated by Lord Cranworth in *Forbes v. Eden (L. R. 1, Scotch Ap. 568)*. These I may simply state to be that Courts can take cognizance of the rules of a voluntary society entered into for the regulation of its own affairs when there arise questions concerning the due disposal and administration of property. In that case, no doubt the plaintiffs (priests) alleged that they had been debarred from exercising the office they held in a voluntary association, and also that a right of property connected with that office had been infringed, and that

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they thereby suffered pecuniary loss; and here it is true that the plaintiffs make no averment of any such pecuniary loss. In the other cases, also of priests, this question of pecuniary loss was made the test of their right to sue, but, as Lawrie, J., remarked of the plaintiff in *1 N. L. R. 355*, ' he does not sue as trustee,' *i.e.*, in respect of a right to have and control property independent of any personal benefit to himself thereby.

" I therefore consider that in this case there arises the larger question of the right of a person to sue to have himself maintained in the exercise of rights to take part in ' the due disposal and administration of property.' The plaintiffs claim a right to be called to and take part in the meetings of the Nagaram in connection with the management of the affairs of the temple and the regulation of all matters and things connected with the temple or the property thereto belonging. They set out in that plaint what is the property,—generally speaking, temples, house property, and gold and silver articles,—and they say they have a right in conjunction with defendants to administer these, and that their value is Rs. 100,000.

"' But it is objected that it is not shown whence those rights arise, what rules or regulations of the voluntary association give them those rights.

" For my part, I consider that, as they should avoid pleading evidence, and as very possibly there are no written rules of management formulating the practice which has obtained for over fifty years, they have sufficiently averred in the 5th and 7th paragraphs of the plaint that certain rights and privileges of administering the property of the temples belong to them and their exclusion therefrom.

" And if it were necessary that they should aver loss of some benefit or advantage to themselves, I do not know that this must necessarily be that which in the first instance is a monetary loss. The evidence so far is that by the act of the defendants the plaintiffs have been interfered with in the full exercise of their rights of worship at the temple. Possibly an action *de injuria* would be open to them thereby, and if they have suffered the annoyance, pain, or any depreciation in their social position thereby, for which in that section they would be given a monetary compensation, I should consider that is a loss which, accompanying their exclusion from the exercise of the rights, would give them a cause of action. As to what was urged of contradiction between first plaintiff's evidence and his cross-examination, I have not observed aught so far save as to the words ' all the members ' in the first paragraph of the plaint. I do not

know why that averment was made. I have had the query in my mind whether the pleaders wanted to avoid thereby some technical requirement of the Voluntary Association Act which would require all to be in Court, suing or being used, when one member as a secretary cannot sue? But when we have section 18 in our Civil Procedure Code, and also section 16, I cannot see why it should have been so. But even if it were, I doubt if the cause of action were so falsified thereby that relief should be refused.

"As to the objection of delay. I do not think I am yet in a position to say whether the plaintiffs should be held chargeable therewith or with any default in not having paid as yet into the temple treasury the dues or subscriptions which admittedly they are liable to pay. The first plaintiff's cross-examination has given us so few of the facts, that if I were to attempt to enshrine them in a nursery rhyme, I could not get any further than the initial line of 'sing a song of sixpence.' The great event of the separation of the co-religionists into two parties over some secular quarrel has arisen apparently from a trivial cause; and whether it is that defendants excluded plaintiffs and the latter nevertheless determined that the collection for the temple funds should still be made, to be delivered thereafter, so that the common cause should not suffer; or whether it was that they withheld funds to compel a typical re-instatement of the member of their party by the return of the fine to him, however nominal its amount (and to me its insignificance of amount suggests that censure and not fine was in truth the punishment imposed), I am not yet in a position to judge, nor, consequently, who should have taken action for a decisory result if peace were not made, but did not, and so is in the fault of delay. Very possibly both parties are to be commended for their abstention from more serious measures so long as there might be reconciliation, and there should be no such blame to either.

"I think I have glanced at most of the subjects discussed, with the result that I find that, so far as the little evidence yet adduced informs me, there has been a voluntary association for over fifty years, who had such a general procedure as plaintiffs indicate, whereby it may be assumed that the rules were that the procedure should be such; and that after this time there has been a departure from the procedure, in that those entitled to confer upon and direct the administration of property have not been called to do so by the defendants, chief of whom is one designated as the trustee or manager of the temple—I suppose somewhat resembling the managing director in a limited company—and that the exclusion has even been directed to affect the plaintiffs in

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the religious element of the lives of each of them personally. Should that change be suffered to continue, or should the status be restored as far as possible in the direction of suffering all to join in such matters, as their co-operation therein might tend to restore amity? The balance of convenience plainly is that, while defendants continue to enjoy their original rights, the plaintiffs should be also allowed to participate therein, they having given their undertaking that the monetary interests of the common association should not suffer thereby.

"I therefore allow the plaintiffs the *ad interim* injunction which is prayed, and I grant it because it gives to the plaintiffs and yet allows to the defendants all that, if there had been no breach in their amity, each would fully have."

The defendants appealed.

The case was argued in appeal on the 19th and 20th May, 1902.

Bawa (with him *Van Langenberg* and *F. M. de Saram*), for appellants.—The plaintiffs are not entitled to an injunction, owing to the delay which has occurred between July last, when the disputes between the parties arose, and the May following, when the plaintiffs came into Court. This delay shows that their application for an injunction now is simply vexatious. Why should not the state of things which has existed during the last ten months continue for some time more, till the action is finally disposed of in the Court below? In the case of *Malar v. Kandu* (*2 S. C. R. 97*), it was held that delay disentitled a party to this form of relief. Vice-Chancellor Bacon said, "It is one of the "most wholesome rules that a person who comes for the extra- "ordinary relief of an injunction should come speedily." *Isaacson v. Thomson, 41 L. J. Chancery 101; D. C., Kalutara, 2,025; Supreme Court Minutes, 6th June, 1899.* But the plaint is defective. It is alleged that though the plaintiffs and defendants together form an association for worshipping a certain god, yet they have the right to acquire property and hold it for the benefit of all the members of the association, and that in point of fact they hold property worth Rs. 100,000, and have a right to administer it according to certain customary ways. An association of more than twenty persons which carries on business for profit is illegal if not registered under section 2 of Ordinance No. 9 of 1867. It is admitted by the plaintiffs that hundreds of Nattu Kotte Chetties are members of the association. And it has been held that under the Indian Companies' Act X. of 1866 such an association could not obtain an injunction if not registered (*Sabaji v. Sagu, I. L. R. 1 Bombay, 550*). The plaint does not say that the

temple and the properties in the hands of the parties are vested in anybody. The title deeds are not produced, and it is neither alleged nor proved in whom the title is. Some mention is made of a Nagaram, but its constitution is not set out, and there is no evidence that any of the parties to the suit are beneficially affected by the properties said to be in existence. If no right is shown to the property, the complaint simply amounts to a deprivation of some religious rites and privileges. Our Civil Courts will not interfere in matters purely religious. *Marshall's Judgments*, *656; Creasy's Reports*, *155; Kurukkal v. Kurukkal (1 S. C. R. 354); Lebbe v. Koreen (1 N.L.R. 351); Aysa Umma v. Abdul Lebbe (Rámanáthan, 1867, 240); Ayer v. Changarapillai (2 N. L. R. 30).* In purely ecclesiastical matters such as the present case appears to be, in that the plaint alleges that the defendants did not allow plaintiffs to take part in certain religious ceremonies, our Courts will not interfere. Assuming that the association was legally formed, it cannot be said that the plaintiffs were, at the filing of the plaint, members of it, as they admit that for several months previous thereto they had not conformed to the rule or practice which requires them to make contributions in the manner pleaded in the plaint; and it is not denied that they are in unlawful possession of some of the funds. In these circumstances they have no right to come into Court praying for such relief as they have prayed. Under section 87 of the Courts Ordinance the right to grant an injunction is exercisable only where the injury cannot be easily assessed in damages. Here damages have been actually estimated and averred. In *Adappa v. Arumugam (1 S. C. C. 98)*, it was held that no injunction should be issued when irremediable damage is not likely to arise. *Zilva v. Lee (6 S. C. C. 144).* No irremediable damage has been established.

Dornhorst (with *Sampayo*, *H. J. C. Pereira*, and *De Mel*), for respondents.—The plaint submitted to Court is a copy of that drawn by Messrs. Withers and Layard (afterwards Judges of this Court) in D. C., Colombo, 46, in a similar case. Mr. Justice Clarence granted an injunction to the plaintiffs in that case. The plaintiffs and defendants are members of the Nagaram. They have a common interest in all the properties purchased. The plaintiffs have done nothing to forfeit this membership. Defendants have not denied on oath any allegation made in the affidavit filed on behalf of the plaintiffs, nor have averred anything against the plaintiffs, who were entitled to withhold their subscriptions in view of their exclusion from worship in the temple and management of the concern. The plaintiffs stand

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aloof in consequence of a decision arrived at by them. That decision is *bonâ fide*. It is immaterial now to consider whether it was right or wrong. Kerr's *Injunctions, 467* (second edition). In the case of ***Pillai v. Tamby*** (*2 S. C. R. 59*), the injunction allowed by the District Court was mandatory and restraining. The mandatory injunction ordered the defendant to remove a building already erected, and the restraining injunction bade the defendant not to erect buildings so as to prevent free access of light and air to plaintiff's house. The Supreme Court recalled the mandatory injunction, but allowed the restraining injunction, notwithstanding the delay of four years on the part of the plaintiff. So here, the plaintiffs do not want to undo anything, but desire to prevent future misdeeds. Then, as to the want of registration of this association—[MONCREIFF, A.C.J.—We do not want to hear you on this point. WENDT, J.—The object of the association appears to be religious and charitable, not procurement of worldly gain]. Then, as to the jurisdiction of the District Court, the dispute here is not purely religious, as was the case in *Aysa Umma v. Abdul Lebbe* (*Ram. 1867, p. 240*). The plaint discloses that the dispute is also about property. In *Fernando v. Bonjean* (*Ram. 1875, p. 168*), known as the Madu Church Case, it was held that where a society was formed on a consensual basis, any aggrieved person who complains of a violation of its laws and usages, if such rights relate to a matter of mixed spiritual and temporal character, was entitled to come into Court. This principle rested on a judgment of the Privy Council in *Brown v. The Curate and Churchwardens of Montreal* (*44 L. J. P. C. Cases, p. 1*); *Ayer v. Changarapillai* (*2 N. L. R. 30*); *Changarapillai v. Chelliah* (*5 N. L. R. 270*); *Forbes v. Eden* (*L. R. 1 Scotch Appeals, 568*). Then, as to irremediable injury, that element was necessary under the Roman-Dutch Law, but our Code does not view it as essential. Nevertheless, it may be reasonably contended in this case that the exclusion of the plaintiffs from worship at their temple is a denial of spiritual benefit which cannot be compensated for by money, and in this sense it is an irremediable injury. [MONCREIFF, A.C.J.—I see that even in the Code there is provision for an application to the Supreme Court for an injunction on the ground of irremediable injury.] Yes, to the Supreme Court. The injunction granted by the District Court cannot do any harm to the defendants. The English and Indian Courts have granted injunctions even in doubtful cases, on the strength of the doctrine of balance of convenience. *Reed v. Richardson* (*45 L. T. Rep. 54*); *O'Kinealy, p. 426*, commenting under section 492. The injunction has simply left the parties *in statu quo ante.*

Preston v. Luck (*L. R. 27 Chan. Div. 507, per Cotton, L. J.*). Lastly, about the alleged delay. The plaintiffs are not to blame. They kept the door ajar for reconciliation as long as they thought it was possible. The District Judge found that no materials were laid before him to charge the plaintiffs with delay. The Supreme Court granted in the case of *Pillai v. Tamby* (*2 S. C. R. 59*) an injunction, even though plaintiff delayed coming into Court for four years.'

Bawa replied.

Cur. adv. vult.

28th May, 1902. WENDT, J.—

This is an appeal by the defendants against an interlocutory order of the District Court restraining them *ad interim* from interfering with the exercise by plaintiffs of their rights as members of a voluntary association of Nattu Kotte Chetties called the " Pudu Kovil Nagaram, " to which both parties belong. This injunction was granted on the 12th May, 1902, after hearing the defendants before issue of summons upon the plaint, and the material before the Court was the plaint itself and the first plaintiff's affidavit in support, supplemented by the cross-examination of the deponent thereon.

It would appear that the association is in great part, if not altogether, a religious association, but it is possessed of considerable immovable and movable property purchased out of the association funds, including two temples in Colombo dedicated to the Hindu god Kadirasen, the perpetuation of whose worship is stated to be the principal object of the association. Festivals in connection with this worship are held by the association at certain seasons of the year. There appears to have been one in March last; another (called " Chittra Poosai ") fell on the 12th instant, the very day on which the present injunction issued, and it was therefore postponed; and a third (the most important, called " Vale ") occurs in the month of July, and marks the beginning and ending of the association year.

There are no written rules of the association, and, as might be expected, the qualifications and rights of members are left in some doubt by the evidence. The fact, however, that the twenty-one plaintiffs were members until at least July, 1901, is not denied. The members have the right to worship at the said temples, and to join and contribute to and take an active part in all religious festivals in connection with the temples, and the right to be summoned to and to attend all meetings in Colombo in connection with the management of the temples, the disposal of the funds

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thereof, and the celebration of festivals. It is averred to be a rule of the association binding on all its members, since its foundation in 1850, that no funds subscribed by members for religious purposes shall be applied to any purpose whatsoever " without the united consent of all the members expressed at a meeting for that purpose convened. "

Paragraph 6 of the plaint (which was filed on 6th May instant) averred that " owing to a recent dispute " between plaintiffs and defendants, the latter had wrongfully taken exclusive possession of the temples and other property of the association, had placed and maintained persons in the temples to exclude the plaintiffs therefrom by force if necessary, and were concerting measures. without calling the usual meeting of members, for the sole and execlusive conduct by and among themselves of the forthcoming annual festival " Chittra Poosai, " and threatened to deprive plaintiffs of their rights to co-operate in the preparation for and conduct of that festival, to plaintiffs' damage of Rs. 5,000. The plaint and affidavit in support assign no date to these wrongful acts of defendants, beyond such as is to be inferred from the reference to the " recent dispute, " but paragraph 8 of the plaint charged that defendants had, contrary to rule, borrowed money and expended such money as well as the subscribed funds of the association on the purchase of a gold and silver car, and on the festivals, " during the past ten months, " without the aforesaid united consent of the members. The first defendant is described as the " trustee of the association " and as " manager of the temple. "

One of the grounds upon which the defendants have resisted the issue of an interim injunction is that of plaintiffs' delay, and to dispose of this point it is necessary to examine the evidence bearing upon it in connection with the allegations of the plaint which I have just particularized. First plaintiff in his examination stated that at the meeting of the association in July, 1901 (what might be called the regular annual general meeting), the plaintiffs objected to the purposes to which certain funds had been applied, on the ground that they were not temple purposes. The objection failed, and " the plaintiffs all withdrew from the Nagaram last July, and defendants have conducted it since then. They do not allow us in, and even interdicted us from breaking cocoanuts [one of the ceremonies performed in the temples]. We were expelled (literally stopped) from all ceremonies. " First plaintiff further stated: " Since we objected to the wrong use of temple moneys, we have not been summoned to the Nagaram. I did not get notice to attend the Nagaram meetings, as I was not asked

to and I did not go. After the row we, in a body, separated from the Nagaram. Four or five of us went after July to the temples with cocoanuts to have them broken, but the temple servants would not break these, and we could not offer them with incense and bring them broken home." The 1st plaintiff proved that he had not paid his subscriptions (payable daily at a certain rate proportioned to the quantity of rice received into his stores) for the year ending last July, owing to some disputes, but the other plaintiffs paid up to that date. Since then, however, none of the plaintiffs had paid at all. First plaintiff had, however, collected the subscriptions of the other plaintiffs, and now held them in the name of the temple. He expresed his readiness to deposit them even now if the dispute were settled. He had not got from his co-plaintiffs the special contribution which is made for the Chittra Poosai. First plaintiff further stated that "every Chetty who comes to Ceylon is a member of the Nagaram. We have to pay a contribution in order to attend the temple. All Chetties can worship at the temple, but cannot take a part in the affairs of the Nagaram without so contributing as I have described. There is also a necessary contribution to the festival of Chittra Poosai, and people who do not contribute cannot take part in it, but can simply go there."

I read this evidence as establishing that plaintiffs, dissatisfied with the management of the association, withdrew from it in July, 1901, and the defendants, the majority of the members, carried it on as before, ignoring the plaintiffs. I say "as before," because nothing is said to have been done by defendants which would have been open to objection, except on the ground that the plaintiffs had had no voice in the doing of it. For ten months this state of affairs has continued, and the plaintiffs did not invoke the Court's aid to enforce their rights. The defendants have done nothing new; they have begun to prepare for the necessary festival, as they did for a previous one in March, which they carried out without consulting plaintiffs. The latter did not even then ask for the present injunction. It is true first plaintiff said that some of the Chetties had urged the parties to settle their differences, and had so urged them about ten times up to March last, and even after that up till now; but he did not say that anything like negotiations have been on foot as between the parties themselves, that defendants' conduct has shown signs of yielding or has given plaintiffs reason to believe that the differences would be arranged without recourse to law. We have been asked to bear in mind, and I have given the fact due weight, that people are naturally reluctant to bring before the Court disputes

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among members of a religious association intimately associated with matters of religious observances and ceremonies. But the Court in such cases has regard only to civil rights of property, and when these are infringed, a party must beware lest his dilatoriness in applying to the law should deprive him of the right to claim the extraordinary remedy of an interlocutory injunction.

I am of opinion that plaintiffs' delay in coming to Court disentitles them to interfere before final decree with the course of defendants' conduct, which has continued for ten months. Soon after July last they must have been apprised of the position defendants took up. They were then denied the rights of members, to which they believed themselves entitled, and they might then have invoked the aid of the Court. They did not do so, and their withdrawing in a body, not insisting on their rights but lying by for so long, comes very near, if it does not amount, to acquiescence in defendants' course of action. The cases cited to us at the argument established that one of the most wholesome rules on this subject is that a plaintiff coming to Court for the extraordinary relief of an injunction should come speedily. I do not think it can be said that plaintiffs in this action have come speedily, and whatever be the rights which they might establish at the hearing, I think they are not entitled to the interim injunction which they have obtained.

I would therefore set aside the order of the District Court with costs.

MONCREIFF, A.C.J.—

I am of the same opinion. The simple question was whether the plaintiffs, having brought an action for the restoration of their privileges as members of an association to which the defendants also belong, were entitled *pendente lite* to an injunction which would substantially grant them the privileges which they seek by their action. Has the attitude taken up by the plaintiffs entitled them to this indulgence? So far as I can understand, they separated themselves from the main body. Mr. Dornhorst took upon himself the responsibility for a part of the evidence given by Palaniappa Chetty, but that witness on more than one occasion accepted the words put to him. Towards the end of the evidence, he says that "after the row we, in a body, separated from the Nagaram." Apart from this evidence, the whole incident, as described by the plaintiff, leaves on my mind the conviction that they separated themselves from the other party. If they had done so for the purposes of litigating and vindicating their rights, and had taken steps to do so at once, they might

have asked for this injunction, but instead of doing so they proceeded to collect contributions and to use the temple property without paying rent; they also desisted from contributing to the funds of the association. All this was contrary to the rules, unwritten as they were, of the Nagaram, and, as the plaintiffs themselves admitted, the mere cessation to contribute was sufficient to debar a member from taking part in the affairs of the Nagaram. They have delayed even taking steps to ascertain their legal position for a considerable number of months, and as they have maintained their independent attitude towards the other members of this association for so many months, I think that no hardship will be inflicted upon them if they continue to preserve that attitude until the decision of the suit.

It was said that they were entitled to be restored to the *status quo ante*. I doubt whether this injunction does restore that status, or whether that status can be temporarily restored, but I am quite certain, from the pertinacity with which both sides have fought this matter, that the balance of inconvenience would be secured if the injunction were allowed to stand. For these reasons I agree with my brother that the injunction should be dissolved.