
(1936) 03 BOM CK 0021

In the Bombay High Court

Case No : Civil Revision Application No. 134 of 1934

Mahadev Heramb Dev

APPELLANT

Vs

Govindrao Krishnarao Kale

RESPONDENT

Date of Decision : 30-03-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1

Citation : AIR 1937 Bom 124 : (1936) 38 BOMLR 1137

Hon'ble Judges : Tyabji, J;Broomfield, J

Bench : Division Bench

Judgement

Broomfield, J.—This is a batch of civil applications relating to the Chinch-wad Sansthan. The history of this institution is given in Chintaman Bajaji Dev v. Dhondo Ganesh Dev ILR (1888) Bom. 612 In consequence of the decree of this Court in that case, a scheme of management was drawn up, which with some modifications made in 1896 is still in force. It vested the management of the institution in a committee of three trustees,—one representing the eldest branch of the family of the founder, one selected from among members of that family generally, and the third representing the general body of worshippers. All three of the trustees are nominated by the District Judge, Poona.

2. Clause 4 of the scheme, which is the most important for our present purpose, is in these terms:-

The said trustees shall hold office for life, but it shall be competent to the District Judge of his own motion or upon the application or representation of any person interested in the said Devasthan to remove from the management any trustee who may be found to be unfit or incompetent for the management of the Sansthan or negligent in the discharge of his duties.

3. The District Judge has a general control over the engagement of the establishment by the trustees. His previous sanction is required for compromising suits and for borrowing money. It is provided that the trustees

shall furnish to the District Court every year an account of the property and the amounts received, disbursed and invested. The District Judge is required to frame rules for the guidance of the trustees and submit them for sanction of the High Court, and Clause 27 provides that the scheme shall be subject to such modifications as may be made hereafter by the High Court on the application of parties interested in the Sansthan. At the material time the trustees were Shri Dharanidhar Ganesh Dev, chief trustee, Mr. Mahadev Heramb Dev, second trustee, and Mr. L.R. Gokhale, third trustee.

4. In April, 1932, the District Judge, Mr. Dhurandhar, submitted proposals for amending the scheme which, in his opinion, had proved to be unsatisfactory. Notices were issued to the trustees, but they questioned the power of the District Judge to move the High Court in the matter, and in January, 1933, this Court directed that the persons interested in the Devasthan should make applications for amendment of the scheme under Clause 27. But in the meantime there had been a Government" audit of the accounts of the institution and the auditors" report submitted in July, 1932, disclosed serious frauds and malpractices on the part of certain clerks employed by the trustees and suggested that there was ground for supposing that the trustees themselves or some of them might have been privy to the frauds. As considerable sums of money were involved, an enquiry was made by the Criminal Investigation Department. On March 21, 1932, the District Judge, who was then Mr. Nanavati, after considering the auditors" report, the report from the Criminal Investigation Department and other matters mentioned at the beginning of his order, suspended the three trustees and appointed Mr. V. P. Raverkar, a retired Subordinate Judge, as Commissioner to carry on interim administration pending a formal enquiry by the District Judge into the question of the responsibility of the trustees for the frauds and the steps necessary for putting the affairs of the institution on a proper footing. Mr. Nanavati considered that he had power to pass these orders under the scheme, but by way of greater caution and also, as he says, to give the persons concerned a right of appeal, he made a separate order on the same date as Judge of the District Court appointing Mr. Raverkar receiver under Order XL, Rule 1, of the Civil Procedure Code.

5. In view of the action taken by the District Judge, the applications pending in the High Court for amendment of the scheme were not proceeded with and the papers were forwarded to the District Judge for consideration in the course of his enquiry. The District Judge heard the trustees and other interested parties, took evidence and passed final orders on December 11, 1933. He exonerated all three trustees of anything in the nature of breach of trust. But he found that trustee No. 1 had been negligent and had failed to exercise proper supervision over the clerks and that trustee No. 2 by needless quarrelling with trustee No. 3 had hampered the efficient management of the trust to a great extent. He also found that trustees Nos. 1 and 2 had combined to overrule trustee No. 3 who had been doing his best to improve the administration. Trustee No. 3 was exonerated from all the allegations made against him. In the result, trustees Nos. 1 and 2 were

ordered to be removed from their position as trustees, while trustee No. 3 was ordered to be reinstated. But as Mr. Nanavati, like his predecessor, was of opinion that the scheme of management required drastic alteration so as to give the District Judge a wider choice in the selection of trustees and in various other ways, he directed that the administration should continue to be in the hands of the receiver pending the disposal of the matter by this Court.

6. Of the applications now before us, Nos. 134 and 135 are in the nature of appeals against the orders of the District Judge suspending and removing trustees Nos. 1 and 2 and appointing a receiver. The others are concerned with various proposals for amendment of the scheme submitted by the District Judge, Mr. Dhurandhar, by the receiver Mr. Raverkar under instructions from Mr. Nanavati, by the three trustees and by other interested persons.

7. In applications Nos. 134 and 135 three main questions have been presented for our consideration. (1) Had the District Judge jurisdiction under the scheme to suspend the three trustees and after enquiry to remove two of them ? (2) Had he jurisdiction to appoint a receiver ? (3) If these orders were within his powers, are they justified on the merits ?

8. Clause 4 of the scheme gives the District Judge power on his own motion or on application of any persons interested to remove any trustee for unfit-ness, incompetence or negligence. Power to remove must, I think, include power to suspend pending necessary enquiries. The District Judge, as his final order clearly shows, found trustee No. 1 guilty of negligence in the discharge of his duties and No. 2 unfit to be a trustee by reason of his quarrelsome and obstructive conduct. Prima facie, therefore, the orders passed were within the powers conferred by Clause 4. The arguments put forward on behalf of trustees Nos. 1 and 2 to show that the District Judge acted without jurisdiction are based on the construction placed on this clause in the case of some previous orders of the District Judge which came before this Court in revision or appeal.

9. In Civil Application No. 169 of 1895, an application to remove the trustees had been made to the District Judge, but he had refused to entertain it. This Court agreed with the District Judge and observed as follows:-

We think that the clause was intended to give the Judge a general control over the trustees and over their management of the trust and that it enables him to entertain an application made against trustees appointed under the Scheme and to remove them should he find that they are unfit or incompetent or negligent. In cases of breach of trust however the explicit direction of the law would apply and the complaining party would have to have recourse to Section 539 (now Section 92) of the G.O. So far as the present application is concerned we think that the District Judge exercised a right discretion in rejecting it since it is vague and uncertain on the charges of negligence and the greater part of it relates to allegations of dishonesty and fraud which could not be made under the clause in question. On a proper application being made under the clause the Judge will

doubtless exercise the jurisdiction.

10. In Appeal No. 57 of 1897, which was an appeal from a similar order of the District Judge refusing to take action, the Court said:-

On a careful consideration of the wording of the 5th clause of the scheme of management-(I may mention that at that time the present clause 4 was numbered clause 5)-we think that its object is to empower the District Judge to remove any particular trustee for unfitness, incompetency or negligence, but that it was not intended to enable him to take upon himself the functions of a Court and to remove the trustees as a body upon charges which virtually amount to charges of breach of trust. No doubt as remarked in the order of the High Court, dated 3rd December 1895, the clause was intended to give to the Judge a general control over the trustees, but we do not think that by that it was meant that he was virtually to try what is in effect a suit in a miscellaneous application such as the present one. If there are any real grounds of complaint against the trustees the applicants can put them forward in the suit, which they state that they are about to file u/s 539 of the Civil Procedure Code. The time of the Court should not be taken up in preliminary skirmishes for inspection, which should follow and not precede the filing of the suit.

11. In Appeal No, 175 of 1918 the judgment of this Court is as follows:-

The District Judge was perfectly correct in dismissing this application. The application purports to have been made under paragraph 4 of the Scheme. But the petitioners in a very long petition make all sorts of allegations against the whole body of trustees of mismanagement and of not complying with the terms of the Scheme. It is quite clear that that is a subject for a regular suit, and cannot possibly be tried as an application under paragraph 4 of the Scheme. So the Appeal must be dismissed with costs.

12. Relying on these cases the learned counsel for trustees Nos. 1 and 2 have contended that the District Judge may remove individual trustees for any of the reasons stated in Clause 4, but he cannot remove the whole body of trustees. He cannot remove any trustee for anything which amounts to breach of trust and he cannot remove any trustee for unfitness, incompetency or negligence, if anything in the nature of breach of trust is also alleged against him. It can hardly be said that the judgments, which I have just read, go so far as to support the last of these propositions. They do undoubtedly lend some support to the others, though, with the utmost deference to the learned Judges who decided these cases, I find it very difficult to accept them. If the District Judge has power to remove any trustee for unfitness, etc., it is difficult to see on what principle it can be held that he cannot remove all of them if circumstances should make it necessary. If he can remove for unfitness, it is difficult to see why he cannot do so for dishonesty or breach of trust. Section 92 of the Code, as I understand it, does not say that a trustee guilty of breach of trust can only be removed by a suit. A suit may be brought to remove him and any suit seeking that relief must

be brought in the manner prescribed in the section. But if a suit has once been brought under the section, as is the case here, and a scheme has been framed which provides for the removal of trustees for unfitness, the exercise of that power is not, in my opinion, contrary to Section 92, even though the trustee may be unfit by reason of a breach of trust. In that connection I may refer to my judgment in *Chandraprasad v. Jinabharth* (1930) 33 Bom. L.R. 520 I am certainly not prepared to extend the reasoning in these judgments to cases not precisely covered by them and nothing was actually decided which is inconsistent with the orders passed by the District Judge in the present case. He has not removed the whole body of trustees, but two of them. He has not removed them for breach of trust, as he has found that charge not established, but for negligence in one case and unfitness in the other. In my opinion, that was within his powers.

13. As for the order appointing a receiver, which the District Judge purported to make under Order XL, Rule 1, that has been attacked on the ground that there was no suit or original proceeding in the nature of a suit pending when the order was made, and reliance has been placed on *Thakur Pershad v. Sheikh Fakir-ullah* (1894) L.R. 22 I. A. 44 One answer to that might be that the suit in which the scheme was framed may be regarded as still pending, as held by Mr. Justice Patkar in *Chandraprasad v. Jinabharthi* (1930) 33 Bom. L.R. 520 and *Kadri v. Khubmiya* (1930) 33 Bom. L.R. 546 That view, I admit, does not appeal to me for the reasons given in my judgments in those cases. Another view which has been suggested is that the appointment of the receiver might be regarded as being made in execution of the decree by which the scheme was set up. That was the District Judge's own view of the legal basis of the order of appointment. (See paragraph 18 of his order of March 21, 1933). It is supported to some extent by *Damodarbhat v. Bhogilal* ILR (1899) Bom. 45 : 1 Bom. L.R. 509 A receiver may be appointed in execution proceedings u/s 51 of the Code. The difficulty, however, is that there was no application before the District Judge for execution of the decree. I think that the real foundation for the order appointing a receiver must be found in the inherent powers of the District Judge under the scheme. It is common ground and has been held by this Court in *C. R. A. No. 169 of 1895* that the District Judge has a general control over the trustees and over their management of the trust, and if in the exercise of his powers under Clause 4 he finds it necessary to remove the trustees, he must, in my opinion, be credited with the power to take emergency measures for temporary management pending reconstitution of the board of trustees. I am not prepared to hold that the appointment of a receiver was ultra vires under the peculiar circumstances of the case.

14. That brings us to the question whether the District Judge's orders were justified on the merits. Before we go to that, it is necessary to consider a preliminary point as to the nature of our jurisdiction. Are we dealing with these applications in appeal or in revision or in what way ? In *C. R. A. No. 169 of 1895* the opinion was expressed that an appeal lay from the order of the District Judge dismissing an application for removal of trustees. There was no discussion of the

point, nor was it actually decided, but the subsequent cases were treated as appeals. On the other hand, in *Lambodar v. Dharanidhar* (1925) 28 Bom. L.R. 64 a case dealing with the same scheme, this Court held that the District Judge is a *persona designata* and no appeal lies from his orders. The particular order which was challenged in that case was one appointing a trustee under Clause 3 of the scheme. But, if the reasoning of the judgment is correct, it would apparently apply to an order of removal also. Unfortunately no reference was made to the previous cases, although Macleod C. J., who delivered the judgment, was a party to one of these. If the District Judge is a *persona designata* under the scheme, as it stands, we obviously could not interfere with his orders, at any rate if they are within his powers. Moreover, even if he is not a *persona designata* but a Court, it by no means follows that orders passed by him in accordance with the powers conferred by the scheme are open to appeal on the merits. The weight of authority seems to be in favour of the view that they are not : *Jeranchod Bhogilal Vs. Dakore Temple Committee*, , a Privy Council case, *Shridhar Anant Ganpule Vs. Ganu Ragho Gurav*, , *Chandraprasad v. Jinabharalhi* (1930) 33 Bom. L.R. 520 and *Kadri v. Khubmiya* (1930) 33 Bom. L.R. 546 However, as the matter cannot be said to be free from uncertainty, we have not declined to hear arguments on the merits, and indeed it was necessary to do so in order to clear the ground for the applications for amendment of the scheme.

15. Trustee No. 1, as representative of the eldest branch of the family of the founder, is not only chairman of the trustees but also ministrant or *pattadhikari*, i.e., religious head of the institution. He is required to reside in Chinch-wad and has religious duties to perform which admittedly take up a great deal of his time. He has stated himself that he regards the performance of these religious duties as his principal function. It appears that in 1923, about the time he was appointed, an attempt was made to allocate the work among the three trustees so as to leave secular matters largely in the hands of trustees Nos. 2 and 3, but for some reason or other the resolution of the trustees was not acted upon. Trustee No. 1 as the person always on the spot and as *ex officio* chairman of the board was naturally expected to exercise the necessary day to day supervision of the administration. He appears to have accepted that position; at any rate he took no effective steps to delegate his duties. There cannot be the slightest doubt, in my opinion, that his supervision was very largely perfunctory. As Mr. Nanavati points out in paragraph 10 of his final order, trustee No. 1 frequently signed entries in the cash book when the opening balance did not correspond with the closing balance of the previous day. One of the ways in which the dishonest clerks embezzled the funds of the institution was by showing the opening balance as less than the previous closing balance—a simple fraud which a very moderate expenditure of time and trouble would have prevented. There seems to have been plenty of warning. There was a Government audit in 1928-29 in which various irregularities were pointed out, especially on the part of a clerk named Bapat. He was taken back into service in 1930, with the result that he committed further defalcations. Mr. Nanavati finds that trustee No. 1 was

mainly responsible for this. There is perhaps some doubt as to his special responsibility in that respect, but a man who occupies the position of chief trustee and accepts the position is well aware of the need for careful supervision, and if he fails to exercise it, he cannot be acquitted of negligence.

16. For many years pa* there has been serious friction between trustee No. 2 representing the Dev family and trustee No. 3 representing the general public. In fact the former appears to have carried on a sort of vendetta against the latter and has persisted in bringing all sorts of accusations against him which on enquiry were found to be baseless. He was dismissed once before by the District Judge Mr. Wild in 1926, but reinstated. Mr. Nanavati, who has discussed the matter in great detail in paragraphs 13 to 20 of his final order, considers that trustee No. 2's foolish and spiteful conduct has hampered the management of the trust and prevented reform. The learned counsel on his behalf has challenged this finding and tried to make out that his client's behaviour was due to his zeal for the institution. As to the practical effects of his quarrel with trustee No. 3 the opinion of the District Judge, who had first-hand experience of the affairs of the Sansthan, is more likely to be right, and certainly the evidence makes it clear enough that trustee No. 2 has faults of character or temperament which make him an impossible member, or at any rate a very undesirable and unsuitable member, of the board of management of this trust.

17. Mr. Nanavati's reasons for suspending the trustees and appointing a receiver are set out at great length in his order of March 21, 1933. Not only was the administration of the Sansthan in a hopelessly chaotic and unsatisfactory state, but also, in view of the facts disclosed in the auditors' report, it was essential to carry out a detailed and protracted enquiry into the conduct of each of the trustees. It was a case of emergency, and it is impossible to say that the steps taken by the District Judge were uncalled for, or that there was any practical alternative.

18. The only remaining question is whether the District Judge was right in removing trustees Nos. 1 and 2 after the enquiry had exonerated them of dishonesty. We are quite satisfied that he was right in the case of trustee No. 2. We are not satisfied that he was wrong in the case of trustee No. 1. We would only say in the case of the latter that we think the facts established need not necessarily stand in the way of his being reappointed, should the District Judge consider that the safeguards we propose to provide in the amended scheme render that course unobjectionable.

19. Before proceeding to consider the other applications we had to decide a preliminary objection that applications for amendment of the scheme of management can only be made by parties to the suit in which the scheme was originally framed. The argument is based on the opinion expressed by Mr. Justice Patkar in the cases to which I have already referred (*Chandraprasad v. Jinabharathi* and *Kadri v. Khubmiya*). I was a member of the bench which decided those cases and I expressly dissociated myself from Patkar J.'s view on

that particular point. My view, with which my learned brother agrees, is that the scheme cannot be regarded as a continuation of the suit, at any rate in the sense that applications under the scheme can only be made by parties to the suit. Clause 27 provides for modification of the scheme by the High Court on the application of parties interested in the Sansthan. We think that includes any person who may have an interest in the institution from time to time, whether or not he was a party or is a representative of a party to the original litigation. We, therefore, overruled the objection.

20. In consequence of the public notices to persons interested in the Sansthan directed to be given by this Court's order of January 9, 1933, the three trustees, a large number of the members of the Dev family and the devotees of the Pot Devasthan of Morgam are now represented before us. The receiver appointed by the District Judge is also represented. Trustee No. 3 who represents the general public on the board has proposed a large number of amendments of the scheme, but as these are largely based on the amended scheme proposed by Mr. Dhurandhar in his letter of April 14, 1932, and as Mr. Dhurandhar's scheme has obvious advantages in the way of expert drafting, trustee No. 3 has adopted it as his own. For the sake of convenience we have accepted it as the basis of discussion and have heard arguments for and against it clause by clause.

21. It is common ground that the present scheme requires amendment to bring it up-to-date and to remove defects which have become obvious to all concerned. Most of the changes recommended by Mr. Dhurandhar are admittedly necessary or at any rate desirable improvements. It will only be necessary for me, therefore, to refer to a few important points which are matters of controversy or mark a material departure from the present system.

22. By far the most important is the question of the constitution of the board of trustees. Three proposals have been put forward in that connection, (a) That there should be no change, (b) That the board should consist of five members, two from the Dev family, i.e., the chief ministrant and one other, one to represent the subordinate Sansthans and two to represent the general public, (c) That the board should consist of three members, one member of the Dev family, but not the chief ministrant who should be confined to his religious duties, and two to represent the general public.

23. Proposal (a) is that of trustees Nos. 1 and 2 and the other representatives of the Dev family who profess themselves satisfied with things as they are. But there can be no doubt that the present system has proved very unsatisfactory and they did not press their view with any confidence. Of the other two proposals they prefer (b), which is Mr. Dhurandhar's. They strongly object to (c), which is the proposal of the receiver, on the ground that to separate the religious and secular sides of the Sansthan and to deprive the chief ministrant of the position of chief trustee which he has always held would be opposed to the wishes of the founder and to the spirit of the institution as expressed in the original scheme.

24. In our opinion there is a great deal to be said for this point of view and we have decided in favour of Mr. Dhurandhar's proposal. The High Court turned down a similar proposal in 1905, but later experience has shown the desirability of widening the constitution of the board. With a board of five trustees constituted as now proposed there should, we hope, be less friction and greater efficiency. Moreover it is obviously desirable that the Pot Devasthans should have some voice in the management and this is hardly feasible if there are only three trustees. As the trustees under the amended scheme are not to receive any remuneration but only out-of-pocket expenses there will be no material increase in expenditure. We understand that there should be no difficulty in obtaining a sufficient number of suitable candidates for appointment.

25. We have approved the proposal to appoint a superior executive officer to be called the " Sansthan Manager ". The necessity for this appointment has long been recognized by all concerned.

26. Clause 18 of the present scheme prescribes the objects on which the revenues of the Sansthan may be expended and fixes the maximum limits of expenditure under each head. But there is no provision for a budget. It is now provided that a budget should be prepared annually and a copy submitted to the District Judge with the administration report. The details of the expenditure have been relegated to an appendix, which is a more convenient arrangement. These figures have required careful consideration. We have had the benefit of the experience gained by the receiver who has been in charge of the administration for the last three years. In the light of this we have made several alterations in Mr. Dhurandhar's proposals. In particular we have thought it necessary to provide for expenditure on new buildings and for much heavier expenditure on necessary litigation. To offset this we have scaled down the amounts allotted under several other heads. Under the present system the trustees are authorized to apply to the District Judge periodically for permission to increase or decrease the prescribed maxima, but no power is given to the District Judge, at any rate expressly, to alter the allotments. This defect we have remedied.

27. We have disallowed the scheme for Sanskrit scholarships proposed by Mr. Dhurandhar, not because we do not sympathize with it but because it appears doubtful whether it is in accordance with the purposes of the trust. The present scheme provides for an expenditure of Rs. 1,200 a year on a Sanskrit school at Chinchwad. The proposal is to divert this money to provide scholarships at schools and colleges in Poona. We think this is not permissible, at any rate until an attempt has been made to resuscitate the school at Chinchwad, which, we are informed, has languished mainly owing to the fact that the funds allotted to it have not been spent. We see no reason why part of the allotment, which we have increased from Rs. 1,200 to Rs. 1,500, should not be spent on scholarships to be held at the Chinchwad school.

28. Lastly we have endeavoured as far as possible to remove the legal difficulties which have arisen over these applications. There is some difference of opinion as

to the extent to which the orders of the District Judge under the scheme should be subject to the control of the High Court. The representatives of the Dev family appear to favour a right of appeal from orders of appointment of trustees. This right is not conferred by the present scheme, according to the construction put upon it in *Lambodar v. Dharanidhar* (1925) 28 Bom. L.R. 64 and we see no necessity to introduce it. On the other hand there is general agreement, and we think it desirable, that the District Judge's orders removing trustees should be subject to review. We have accordingly added to clause 10, which corresponds to the present Clause 4, a provision that such orders shall be subject to confirmation by the High Court and may be confirmed or disallowed. At the same time we have made it clear in the definition of District Judge in Clause 2 that he acts as *persona designata* and not as a Court. We have also made express provision in Clause 10 for power to suspend pending enquiry, and have slightly altered the wording so as to make it clear that the District Judge may remove a trustee for unfitness of any kind.

29. Final orders on the amended scheme will be passed after it has been drawn up and the advocates of parties appearing before us have had an opportunity of perusing it.

Tyabji, J.

30. I agree. A scheme providing for the administration of the Chinchwad Sansthan, an institution consisting of the Chinchwad Devasthan and three Pot Devasthans, was framed by the High Court in 1890 and has with some alterations been in operation since then. The immediate events leading to the present proceedings consist of a letter dated January 9, 1934, and written by the District Judge of Poona, Mr. Dhurandhar, in which certain alterations in the scheme were proposed under Clause 27 thereto; and of certain action taken by the successor of Mr. Dhurandhar, the late Mr. Nanavati, in the administration of the institution.

31. Several questions of principle have been raised and argued before us. Our conclusions, stated in detail by my learned brother, depend upon those principles. I will state in my own words the reasons for reaching those conclusions. I need not restate the facts.

32. It has been the practice of this Court to include in schemes for the administration of charitable institutions clauses providing that the schemes may from time to time and as occasion arises be altered by the Court. The Madras and Rangoon High Courts on the other hand are inclined to hold that schemes cannot be altered after they have once been framed. For the reasons that I shall presently state, I agree with my learned brother that the clause in the scheme before us validly provided for its alteration.

33. When a decree includes a scheme for the administration of a charitable institution, the decree is in its substance very different from the generality of decrees. Decrees ordinarily require a particular act to be done by the defendant

for the benefit of the plaintiff, and on that act being done, the decree is completely executed and has performed all its functions. A scheme, on the other hand, provides for continued action in regard to the administration of the charity. It is intended to lay down a plan of a lasting character for the working of the institution. It contemplates a series of acts extending over many years during which its terms are to be put into operation. It must cover a multitude of details. It may have to regulate the conduct of a large and varied staff. It is easy to understand that the Court may find it impossible to foresee all the events and contingencies in which the trust may have to be administered in future. It may come to the conclusion that it would be unwise to attempt to foresee all the contingencies and to exhaust immediately its jurisdiction in regard to the ordering for all future time of the administration of the trust. It may wish to restrict the scope of its immediate decree-the scheme as actually framed,-and at the same time to retain its power to deal with future situations as they arise. This restrained action may be based on past experience leading the Court to expect that situations would arise which cannot be foreseen, but which -if the scheme is to be complete and self-sufficient-must at some time be provided for. The Court may think that the best way of providing for such unforeseen changes in the circumstances would be neither to anticipate them in the imperfect manner in which alone they can be anticipated, nor to drive the parties to a new suit; but to reserve to itself the power of dealing with the altered circumstances-i.e., to provide for the administration of the trust in the altered circumstances,-when they arise.

34. With these considerations in view, the Court may frame the scheme so that it shall operate only for a fixed number of years-say ten years-also providing that the manner in which the trust shall be administered after the expiration of ten years will be considered by the Court after ten years. But other arrangements are also possible. The Court having decided that the scheme in its present form shall operate only for a definite period, that period may be determined not only by reference to the lapse of a fixed number of years but by reference to some other event happening, which event is to serve as a signal that the period has come to an end. Instead of fixing the period by counting the number of years that must elapse after the scheme is framed, it may be provided that the scheme shall continue in operation until the happening of certain events, e.g., until events take place which in the opinion of the Court render the scheme unsuitable or unworkable.

35. These considerations indicate that though the scheme is purported to be altered, and though apparently the Court reserves to itself a power of amending the decree as embodied in the scheme, the exact nature and form of the powers reserved are materially different. For what is in fact done is this : the Court does not, in the first instance, exercise its power of regulating the administration of the trust for all time, but only for a limited period of time. After the expiration of that period, the decree containing the scheme is not strictly altered, it is added to. For in spite of the apparent alteration, the scheme stands for the period

during which it has already been in operation, i.e., it stands for the period for which it was intended to stand; and then the scheme (having been deliberately left inchoate) is carried a step further towards completion, by additions providing how the trust is to be administered during the period that is next to succeed. I have spoken of additions, not alterations, for the scheme after what is called alterations consists of two parts. Part I consists of the original scheme which was in operation for the first period. Part II consists of the altered scheme which is to operate for the second period. Part II is purely an addition.

36. Part I stands as it was. The Court in this manner exercises its jurisdiction in regard to the regulation of the trust for this second period for the first time; the original scheme having been *ex hypothesi* restricted in its operation to the period that has already come to an end. The Court does not go back upon anything that it has already decreed. It merely carries the scheme forward in regard to a period of time for which it had not given its directions. Far from disregarding the provisions of the original decree, the Court on the subsequent occasion follows what had been laid down on the earlier occasion. This last consideration is of some significance as it has been suggested that by altering the scheme the Court alters its own decree without following any recognized procedure such as appeal or review. In my opinion, the true analogy is not that of appeal or review, but an adjournment. The Court abstains from anticipating events, and provides for the necessary decision being given when the occasion, makes the decision necessary. But after all it is only an analogy. For, as I have before stated, a scheme is a very peculiar form of decree.

37. For these reasons I agree that if the scheme is now properly before us, we may proceed to consider the proposed amendments.

38. Secondly, the clause providing for the alteration of the scheme may, in my opinion, be in such terms as to enable persons other than the original parties to the suit to apply to the Court; and the scheme may be altered on the application of the persons authorized by the scheme to apply, even if those persons were neither parties to the suit in its inception nor subsequently made so by order of the Court. If my previous reasoning is correct, this seems to follow from the Court having provided for the administration of the trust only for a limited period, and reserved its power to alter the scheme in respect of the ensuing period. For the Court at the time when it first frames the scheme, has already heard all the parties entitled to be heard. It is accordingly seized of jurisdiction to frame a scheme that is to last in perpetuity. It, however, stays its hand. It does not do all that it has jurisdiction to do. It provides for the administration of the trust only for a limited time. At the expiration of that limited time it proceeds to exercise its unspent jurisdiction and provides for administration during a further period of time. Since the Court had, in the first instance, not pronounced (as it could have done) its complete judgment, it may at the subsequent stage carry its inchoate judgment towards completion without any further step or proceeding or application. In its initial judgment, however, in the judgment formulating the

scheme Part I,-it may be provided that the Court will not proceed to pronounce its further judgment-the scheme Part II-unless an application is made. The application and the consequent proceedings must of course not contravene the law of evidence or procedure. The Court cannot allow its judgment to be affected by matters of which the law does not permit it to take cognizance, or which are not brought to its cognizance in the manner laid down by law. But subject to this, it may resume the exercise of its still unspent jurisdiction. It has not only the power but the duty to carry its incomplete judgment a further step towards completion; though it may leave it still incomplete so that the same process may be carried through at a subsequent stage.

39. It is important to keep in mind the basis of the argument that the original scheme must operate unaltered for all time. The basis of that argument is that the administration of the trust for all time has been already provided for : and this implies that all the forms and procedure necessary for enabling the Court so to provide have been duly observed. If so, the Court was already authorized to provide for the administration of the trust during the subsequent period. At that subsequent stage, though the Court in form alters the scheme, what it does in reality and in substance is not to alter, but to add to the scheme so as to provide for administration during a period for which the scheme as originally framed had not provided, though even in the first instance, the Court had acquired jurisdiction to deal with this second period.

40. The 27th clause in the present scheme is to the effect that : " This scheme shall be subject to such modifications as may be made hereafter by the High Court on the application of parties interested in the said Sansthan." With; reference to the question whether the scheme may validly provide that an application for its amendment may be made by persons who were not parties to the suit in which the scheme was framed nor were representatives of those parties, there has been a difference of opinion between my learned brothers Broomfield and Patkar JJ. I agree in the view that the scheme may validly contain such a provision. The CPC does not, it is true, provide as Rule 26 of the Rules of the Supreme Court of England, O. XLII, does, under which in England any person though not a party to a cause or matter, in whose favour an order is made, is entitled to enforce obedience to such order as if he was a party to such cause or matter. But the CPC does not exclude the application of such a rule in India : see *Rustomji and Ginwala v. Fazal Rahim* , and unless there is some express authority in(1931) 34 Bom. L.R. 670validating such a clause as is now in question there is no reason for disregarding it. The Privy Council in the cases to which I will presently refer seem to proceed on the same basis. It seems to me, therefore, that the clause must be given effect to in accordance with its terms, and that accordingly any person interested in the Sansthan may apply for an alteration in the scheme.

41. Another set of questions argued before us depends upon the nature and validity of the power that the scheme purports to give to the District Judge at

Poona to remove the trustees. It is suggested that the Court cannot confer such a power because by doing so the scheme is brought into conflict with Section 92 of the Civil Procedure Code. I agree generally with the view expressed by my learned brother in this respect. That view seems to gain support when the nature of the decree and the terms of Section 92 are considered. There is no difficulty that I can see in the way of the scheme providing that the trustees or other persons holding office under the constitution framed by the scheme shall hold office on particular terms. The Indian Trusts Act does not, of course, in terms apply. I refer by way of analogy to the general conditions on which trustees may be appointed and may hold their office. Section 71, Clause (c), of the Indian Trusts Act, specifically provides that the trustee may be discharged from his office by such means as may be prescribed by the instrument of trust. On principle I see great difficulty in holding that a person who accepts office under the scheme for the management of a charitable institution, should be considered not to be bound by the terms of his appointment as laid down in the scheme. The scheme may, it cannot be denied, provide that a trustee shall hold office for a fixed period of time, say for five years. A trustee so appointed could not at the end of five years refuse to give up his trust, and contend that he cannot be removed from the trust except by a suit brought u/s 92 of the Civil Procedure Code. I do not see any difference in principle between the trustee being held to the condition that he shall hold office during a term fixed by the efflux of time, and his being held to the condition that he shall hold office for a period determined by the decision of another person, -say the District Judge, -who in the administration of the trust is clothed with the specific power of deciding when the trustee shall be discharged from his office. It seems to me therefore that, apart from Section 92 which I will presently consider, on principle there is nothing to render invalid a provision in a scheme that a trustee may be dismissed or discharged from his office by any person : and that that person may be the District Judge or the author of the trust or any other person.

42. Turning to the Civil Procedure Code, Section 92, -it determines who may institute suits seeking the reliefs specified therein and in which Court such suits may be instituted. The section comes into operation only in case one of the two stated conditions is satisfied, viz., (1) On an alleged breach of any public charitable or religious trust; or (2) when directions of the Court are deemed necessary for the administration of such a trust.

43. If a scheme is so drafted as to make directions of the Court unnecessary or to preclude breaches of trust, or at any rate, to provide fewer opportunities for breaches of trust, I presume it would not be suggested that the scheme offends Section 92. Nor. can the validity of the scheme be, in my opinion, endangered if the scheme provides for a constitution which makes it unnecessary to obtain some of the specified reliefs, and consequently make it unnecessary to institute suits for obtaining those reliefs. This is what the present scheme does. It provides for a means of removing a trustee without recourse to the Court. This is very far from saying that the functions and authority of the legislature may be

usurped by a decree providing that where the assistance of the Court is necessary, recourse may be had to the Courts in a manner or through a procedure not permitted by the legislature. The scheme does not attempt to usurp those powers, unless it attempts to make the Court exercise a new jurisdiction not conferred on it by the legislature; or to exercise an existing jurisdiction but in a manner dictated by the scheme and not in accordance with the dictates of the legislature. I shall presently proceed to deal with this aspect of the functions and powers of Courts. But subject to it the position already reached may be stated in these terms : that a scheme providing a means for the removal of a trustee without recourse to the Court does not offend any law, and that the Civil Procedure Code, Section 92, does not render invalid or ineffectual a clause that the trustee may be removed from his office by the District Judge of his own motion-I speak of the District Judge as an individual, not the District Court, for reasons with which I shall a little later deal more fully.

44. It follows from what I have stated that, in my opinion, the District Judge was validly empowered to remove trustees. By implication he had power to suspend them and to appoint a manager to act during the period that the trustees were under suspension. My learned brother has dealt with these powers being implied in the power to remove, and I have nothing to add to his observations.

45. Part of the discussion with reference to the action taken by the District Judge in the administration of this trust depends, in my opinion, on an oversight of the distinction between the District Court and the District Judge as an individual. I must here revert to the facts that when the matter comes before the Court for framing a scheme for the administration of a charity, the Court is completely seized of the subject, and may provide for the charity any constitution that it may deem proper in view of the nature, origin and objects of the particular trust; but that the difficulties in the way of framing a finally complete and perfect scheme incapable of improvement makes the Court hold its hand, and a scheme is consequently framed which is to operate only for a limited period : leaving the scheme which is to operate for the next succeeding period to be settled at a future date. In another direction also, it seems to me, similar considerations may prevail. The Court may consider that the administration of the charity ought not to be completely made over to trustees holding independent authority, but that some control ought to be exercised over them by a person whose voice would carry authority and in whose judgment the Court has special confidence. It may choose a judicial officer for the exercise of such control. When a judicial officer, such as a District Judge, is selected to perform such functions, in my opinion, the real nature of his authority in the administration of the charity is not judicial, but similar to that of the trustees. What the Court in fact does is this. The sum total of the authority and functions in connection with the trust is split up. Only a part of those functions-a very large part-is conferred on the persons styled trustees. The residual authority,-a small but important part-consisting of a power to control the trustees,-by removal or in other ways-is vested in the judicial officer. It would perhaps make the situation clearer if the judicial officer when entrusted

with such functions were designated by some such distinctive name as "referee", and not spoken of as Judge. This would serve to emphasize that he acts in an administrative capacity under the scheme, and not in his judicial capacity as the presiding officer in a Court established by the legislature. The fact need not be disguised that he is selected to perform this administrative function by reason of his being a judge, and therefore obviously qualified for the particular function.

46. It is difficult to see how the Court can go beyond what I have stated. The Court cannot confer a new jurisdiction upon the District Judge or any other person, even though he be a judicial officer or direct him to exercise his judicial functions except in respect of matters brought before him in the form and manner provided by the adjective law,-ordinarily by instituting a suit. The Court cannot empower particular persons to present matters to a judicial officer for adjudication, except in accordance with the law of procedure which civil Courts are required to observe when they perform the duty of adjudicating upon matters duly brought before them. Nor can I see how the Court can by the form or terms of the scheme provide that there shall be an appeal, or that there shall not be an appeal from the decision of the judicial officer.

47. The cropping up of this question-whether the decision is appealable-is perhaps the most practical form in which these principles operate on the case before us. Here again it must be borne in mind that by the reasoning I have followed, judicial functions have already been put apart. The scheme may allot or distribute administrative powers needed to be exercised in the conduct of a charitable institution. It can neither create judicial powers nor provide that they shall be exercised in a particular manner.

48. It may seem that the existence or absence of an appeal from the decision, or what is treated like appellate powers, is an indication whether the decision is judicial or administrative. But that does not seem to be the case, for the reasons that I will endeavour to state. A Court exercising appellate jurisdiction may in effect retain to itself-just as it may confer on a subordinate judicial officer--powers with regard to the administration of the trusts : the appellate Court may assign to itself in the scheme the position of a referee,-to use the term I have just mentioned,-and then a part of this function, or some duty, ministerial or otherwise, connected with the functions of the referee may be delegated to a judicial officer subordinate to the appellate Court-and these functions may be delegated not in a plenary fashion, but so that control is retained by the appellate Court over the subordinate judicial officer's acts done in his capacity as a delegate of the referee. In this way the decision of the judicial officer may be subject to the control of the appellate Court, but not by way of appeal.

49. All these powers, must, in my opinion, be brought within or derived from the jurisdiction which the Court acquired by being empowered to adjudicate upon the suit praying that a scheme be framed and the administration of the trust be provided for.

50. In accordance with the distinction that I have last made, we have provided in the amendments that we have decided to make in the scheme, that the District Judge shall have plenary power to appoint trustees, but the power of dismissal has been retained by this Court, and then that power has been partially delegated to the District Judge so as to make his decision subject to confirmation by this Court.

51. The decision of the Privy Council in *Jermckod V. Dakare Temple Committee* (1925) 27 Bom. L.R. 87 seems to me to furnish authority for the conclusions that I have reached.

52. Though the history of that case is complicated, the relevant facts are few. There was a suit for a scheme, instituted in 1880 : *Manohar Ganesh Tambekar v. Lakhmiram Govindram* ILR (1887) Bom. 247 An appeal from the decision of the High Court arising out of that suit was dismissed by the Privy Council in 1899 : *Chotalal v. Manohar Ganesh Tambekar* ILR (1899) Bom. 50 : 2 Bom. L.R. 516 The scheme as framed came up to the High Court in September, 1906, and was confirmed on May 14, 1912, by the Privy Council-*Sevok Kirpashankar v. Gopalrao* (1912) 15 Bom. L.R. 13 The scheme contained two provisions under which it could be added or altered :

(1) Under Clause 12 (7) "the Committee shall have power... .to have all the rules framed by them sanctioned by the District Court of Ahmedabad to the intent that the rules, when sanctioned, shall have the same force as if they were part of the Scheme ".

(2) Clause 20: "The provisions of this Scheme may be altered, modified, or added to by an application to His Majesty's Court of Judicature at Bombay.

52. Under Clause 12 (7) rules were framed by the Committee and sanctioned by the District Judge. The rules therefore had the same force as if they were part of the scheme. In this manner a power to add to the scheme under Clause 12 (7) was vested jointly in the Committee and the District Judge. Once the power was so exercised, neither the High Court nor any other authority was given by the scheme any power to sit in appeal over what had with the sanction of the District Judge been done by the Committee. In this connection the Privy Council say (p. 875) :?-" The sanction given by the District Judge to the rules was apparently considered in the High Court, although erroneously, to be an order made u/s 47 of the Code of Civil Procedure, 1908, and appeals from it were presented to the High Court at Bombay".. The Privy Council also held that there was no appeal to itself from the judgments of the High Court (p. 876) " except on the sole ground that the judgments or decrees were incompetent". But the High Court had entertained appeals purporting to have been filed u/s 47 of the Civil Procedure Code, 1908, and had by its orders dated April 11, 1919, and September 22, 1919, varied the rules which the District Judge had sanctioned-see *Askaram v. Dakore Temple Committee* (1919) 22 Bom. L.R. 232 Under the order of the High Court (secondly mentioned above)-dated September 22, 1919, the rules were

framed in accordance with the view of the High Court. Both these orders were set aside as incompetent by the Privy Council. But their Lordships expressly stated that after the rules framed by the Committee had under Clause 12(7) been sanctioned by the District Judge, the scheme (with the duly sanctioned rules incorporated therein) could, under Clause 20, be altered or modified by the High Court upon an application made to it with the object to alter, modify or add to the scheme. This power had not been exercised by the High Court but it could still be exercised upon application to it.

53. The decision of the Privy Council was consequently that under the scheme the District Judge had the power to sanction rules framed by the Committee. An appeal from this action was not competent. But the High Court had reserved to itself the power to alter, modify or add to the scheme on an application being made to it. The validity of that power was recognized by the Privy Council.

54. Applying the principles that I have stated to the questions in the present case, I agree with my learned brother that under the scheme the power to remove the trustees was given to the District Judge, and that the District Judge must in that respect be considered to act as *persona designata*, -as a referee in the administration of the institution, and not as a Court. The clause giving the District Judge power to remove trustees has been construed by us. The power to remove must include the power to suspend. It would follow, as explained by my learned brother, that the District Judge had power to provide for the management of the institution on a dismissal or on a suspension. The exercise of that power must take the form in substance of appointing a receiver for the management of the trust and may be exercised in a manner similar to that followed by a Court when it appoints a receiver; but, in my opinion, that power was derived from the scheme and in the exercise of it the District Judge was not acting as a Court. The learned District Judge desired to act as a Court so that his action may be subject to reconsideration by the High Court. He, therefore, purported to appoint a receiver under Order XL, Rule 1, of the Civil Procedure Code, and thought that in this way his order would be subject to appeal to the High Court. It seems to me that from the principles that I have stated, it follows that he was not acting in his judicial capacity under the Civil Procedure Code, and his acts under the powers of dismissing trustees were not and could not by his own volition be made judicial acts, subject to appeal to this Court, as if he had acted as a Court under the Civil Procedure Code. The proceedings did not start before the learned District Judge in the manner in which proceedings for the appointment of a receiver whether during execution or at a prior stage of the suit must start. Subsequently the learned Judge with the motive that I have indicated purported to give it a form for the appointment of the receiver under the Civil Procedure Code. It cannot lie with the Judge to clothe a power derived under the scheme with those consequences which follow the exercise of jurisdiction conferred upon a Court by the legislature. The Judge cannot of his own volition say that a particular act shall be considered to be a judicial or an administrative act. He cannot by his own will turn an act of one kind into one of the other so as

to allow or preclude an appeal.

55. For similar reasons I am of opinion that the District Judge had authority to make the enquiries enabling him to exercise his administrative functions under the scheme, and that his decisions were not subject to appeal.

56. I agree with the observations of my learned brother on the construction of the existing clauses of the scheme and on the advisability of altering some of the provisions so as to leave no danger for misunderstandings in future.

57. I agree to the orders referred to in my learned brother's judgment.

March 30. Broomfield J.

58. After further discussion of the scheme we have made certain alterations in it and the scheme as amended is now sanctioned. In consequence of the revision of the scheme it is necessary to make one consequential amendment in the rules for the guidance of the trustees which have been already sanctioned by the High Court.

59. Rule (3) of Part I will now read as follows :-

Except as otherwise specifically provided, the trustees are not entitled to and shall not receive any benefit from the Trust nor shall they utilize the trust moneys as personal loans or deal with such moneys for their personal benefit.

60. We sanction the new Part III of the rules submitted by Mr. Dhurandhar, the District Judge, dealing with the qualifications, duties and powers of the Sansthan Manager.

61. The proposed Part IV of the rules is not sanctioned as that relates to the scheme of scholarships which we have not approved.

62. It now only remains to deal with the costs of these proceedings. In Civil Revision Application No. 134 of 1934 we direct that the applicant, trustee No. 2, do pay his own costs and those of the opponent No. 4, i.e., trustee No. 3. Other costs to come out of the estate.

63. In Civil Revision Application No. 135 of 1934 we direct that the applicant, trustee No. 1, do pay his own costs. Other costs to come out of the estate.

64. In all the remaining applications which relate to the amendment of the scheme, costs of all parties will come out of the estate.

65. Costs of the enquiry by the District Judge will be dealt with by the District Judge.

Scheme for the Management of Chinchwad Sansthan.

1. This scheme may be called the Chinchwad Sansthan Scheme.

2. In this scheme, unless there is anything repugnant in the subject or context

(1) Chinchwad Sansthan " or "Sansthan" means and includes the Devasthan of Chinchwad and Pot Devasthans of Moregaon, Sidhtek and Theur;

(2) "Clause" means a clause of the scheme;

(3) "Committee" means a body of trustees appointed in the manner prescribed in the scheme;

(4) " District Judge " means the District judge, Poona, as persona designata;

(5) "Pot Devasthans" means the Devasthans of Moregaon, Sidhtek and Theur;

(6) " Scheme " means scheme for the management of Chinchwad Sansthan including the Pot Devasthans of Moregaon, Sidhtek and Theur; and

(7) "Trustee" means a person appointed as a trustee under the scheme.

3. The management of the Sansthan shall be vested in a committee of five (5) persons to be called the trustees of the Chinchwad Sansthan.

4. The following persons shall not be eligible to be appointed as Trustees, namely :.....

(a) A person who does not profess the Hindu religion;

(b) A person who is less than 21 years of age;

(c) A person who is of unsound mind;?

(d) A person who is an undischarged insolvent;

(e) A person who holds any interest which is adverse to the Sansthan; (/) A person who does not ordinarily reside within the limits of the district of Poona.

For the purposes of the scheme, the district of Poona shall be deemed to include the Pot Devasthan of Sidhtek.

5. Subject to the preceding clause, the trustees shall be appointed by the District Judge as follows :.....

(a) A person from among the descendants of Shri Narayan Maharaj the eldest son of Shri Chintaman Dev to represent the eldest branch of the family.

(b) A person from among the descendants of Shri Chintaman Dev generally.

(c) A person who is ordinarily a resident of Moregaon, Theur or Sidhtek.

(d) Two persons who according to the opinion of the District Judge would be fit and proper persons to act as trustees.

6. Subject to the conditions in clause 10, the persons appointed under sub-clauses (a), (b) or (d) of clause (5) shall hold the office for life and the person appointed under sub-clause (c) of the said clause shall hold the same for a period of three years. In case no suitable person should be available for

appointment under sub-clause (c), the District Judge shall appoint a fit and proper person to fill the vacancy. The person so appointed shall hold office for three years. He may be re-appointed for a further period or periods of three years, but shall not be re-appointed if a suitable person is available to represent the Pot Devasthans.

7. In appointing a trustee under sub-clause (a) of clause (5) due regard shall be given to the capacity of the person selected to perform religious observances and ceremonies which are required to be performed by him as ministrant or pattadhikari.

8. In appointing a trustee under clause (a) or (6) of clause (5), the District Judge shall make the appointment after ascertaining from the members of the family of Shri Chintaman Dev, or in such other manner as he may deem desirable, who is eligible to act as such trustee and what are his qualifications.

9. Before making an appointment of a trustee under sub-clause (c) or (d) of clause (5), the District Judge shall give a fortnight's notice (1) by affixing a notice in the District Court House at Poona and in the office of the Collector, Poona District, (2) by publishing advertisements in the local newspapers in the city of Poona, and (3) by publishing notices at Chinchwad and .t Moregaon, Sidhtek and Theur.

10 It shall be competent to the District Judge, on his own motion or upon the application or representation of any person interested in the Sansthan, to remove from the management any trustee who in his opinion is unfit for the management of the Sansthan or incompetent or negligent in the discharge of his duties. He may also suspend any trustee, if necessary, pending inquiry into his conduct. Any order of removal of a trustee under this clause shall be subject to confirmation by the High Court, and the High Court, after notice to the trustee or trustees concerned and to the District Judge, may confirm or set aside the order.

11. Upon the death, resignation or removal of any trustee the District Judge shall proceed to appoint another person in his place in; the manner above set forth. Pending such appointment the management of the Sansthan shall be carried on by the remaining trustees. Any act done by the trustees during the period will not be invalid by the omission to fill any vacancy in the office of the trustees.

12. The trustees so appointed shall carry on the management of the Sansthan and shall take charge and continue to be in charge of all the moveable and Immovable property of the Sansthan and shall also recover rents and profits for the same and defray all reasonable and necessary expenses connected with the Sansthan.

They shall also adopt proper measures for the purpose of recovering possession of properties belonging to the Sansthan which have improperly gone into the possession and enjoyment of strangers and the revenues of which are not applied for the purposes of the Sansthan.

13. The Committee shall keep true and correct accounts of all the funds received and disbursed on account of the Sansthan in such forms and books as may be approved by the District Judge.

14. The Committee shall deposit in the Poona Branch of the Imperial Bank of India the revenues and income of the Sansthan as they are received from time to time in the joint names of all the trustees, and any three of the trustees may withdraw such sums as may be required for the purposes of the Sansthan.

The Committee may, with the previous sanction of the District Judge, Poona, invest any unexpended balance in the Government securities mentioned in section 20 of the Indian Trusts Act, 1882 (II of 1882).

15. The Committee shall not keep in their hands more than Rs. 1,000 at a time to meet the current expenses of the Sansthan. This sum shall be kept in the Sansthan Treasury.

16. The trustee representing the branch of Shri Narayan Maharaj shall act as chairman of the Committee, In his absence the persons present at the meeting shall elect their chairman from among themselves. Any three of the trustees who are present at the meeting shall form a quorum,

17. All questions coming up for consideration before the Committee shall be decided by the majority of votes. In the case of equality of votes, the chairman shall have a second or casting vote.

18. The trustee representing the branch of Shri Narayan Maharaj shall act as ministrant in the temple of Shri Mangal Murti and shall perform the religious ceremonies daily and periodical which are usually performed at the Chinchwad Sansthan and at the Pot Devasthan,

19. The trustee representing the branch of Shri Narayan Maharaj shall reside at Chinchwad and perform the daily puju, arti, dhuparti and all other religious ceremonies which are usually performed at the shrine of Shri Mangal Murti and shall be entitled to all honours and privileges and manpans which are hitherto enjoyed by the putladhikari of the Sansthan.

20. Save as hereinafter provided by the rules in appendix " B " the Committee shall appoint fit and competent persons to act as pujaris for the performance of the religious ceremonies at the shrines of Chinchwad, Moregaon, Sidhtek and Theur and make all reasonable and proper arrangements for their remuneration, leave, etc.

21. The Committee, with the previous sanction of the District Judge, shall appoint a person to be called " Sansthan Manager ", who shall be the chief executive officer under the control of the Committee and whose duties and remuneration shall be as prescribed by the rules made in this behalf. The punishment, removal or dismissal of the Sansthan Manager shall be subject to the previous sanction of the District Judge. The Committee shall also engage

such clerks and other servants as may be necessary for the management of the Sansthan and for carrying on the religious ceremonies connected with it, and shall give them all reasonable and proper remuneration. The appointment, punishment, removal and dismissal of persons so appointed shall be subject to the general control of the District Judge.

22. The Committee may institute and defend suits and other proceedings in Civil and Revenue Courts and may make representations to revenue and other authorities on behalf of the Sansthan and defray all reasonable charges and expenses thereof and may, with the previous sanction of the District Judge, compromise any suit or other proceeding.

23. The Committee shall prepare a budget of the annual receipts and expenditure in the month of October of each year and will not, save with the previous permission of the District Judge obtained under clause 29, spend any money for any of the items set forth in appendix " A " exceeding the sums set forth therein.

24. Whenever it should be found necessary the Committee, with the previous sanction of the District Judge, may borrow monies which may be required for the purpose of carrying on the management of the Sansthan and may with like sanction alienate the income of portions of the Sansthan property in order to secure the same. The Committee may also with the previous sanction of the District Judge sell, mortgage or charge any Immovable property belonging to the Sansthan or purchase any Immovable property for the use and benefit of the Sansthan.

25. The official year of the Sansthan shall expire on 31st July of each year. On or before 31st October each year the Committee shall furnish to the District Judge an account of the property in their charge showing the amounts received, disbursed and invested on account of the Sansthan and the balance in hand, together with a copy of the budget for the following year. The Committee shall also submit an administration report on the general working of the trust for the year including therein such information as they deem fit,

26. When the account is filed, the District Judge shall appoint a qualified auditor to examine the said account and report thereon.

27. The District Judge shall fix the amount of remuneration to be paid to such auditor.

28. After the account is audited the District Judge shall cause a copy of the same together with the administration report and the report of the auditor to be put in some conspicuous place in the District Court at Poona, at and in the villages of the Pot Devasthanans. A copy of the audited account shall also be published in the vernacular newspaper of Poona.

29. At the expiration of every five years, the trustees shall report to the District Judge whether the revenues of the Sansthan have increased or decreased and if

so in what proportion and may apply for permission to increase or reduce the expenses in the several heads set out in appendix " A "; and the District Judge may permit such increase or reduction as he deems fit.

30. No person having any interest adverse to that of the Sansthan shall be qualified to be appointed in the service of the Sansthan in any capacity whatsoever.

31. The District Judge shall frame rules for the guidance of the trustees and the administration of the Sansthan and may vary them from time to time. Such rules shall be submitted for the sanction of the High Court and when sanctioned shall be attached to the scheme as " Appendix B ".

32. The scheme shall be subject to such modifications as may be made hereafter by the High Court on the application of any persons interested in the Sansthan or on the report of the District Judge.