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**(1922) 11 BOM CK 0011**

**In the Bombay High Court**

**Case No :** First Appeal No. 62, 164, 199 and 142 of 1919

Shripatprasad Beharilalji Acharyashri

APPELLANT

Vs

Lakshmidas Dungarbhai Barot

RESPONDENT

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**Date of Decision :** 09-11-1922

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 92

**Citation :** AIR 1924 Bom 193 : (1923) 25 BOMLR 747 : 84 Ind. Cas. 808

**Hon'ble Judges :** Pratt, J;Morten, J

**Bench :** Division Bench

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## Judgement

Marten, J.—His Lordship, after narrating the history of the foundation, proceeded : I have dwelt on all these matters at some length not merely because they afford an answer to the appellant (the Acharya) out of his own words, but because they show a vital flaw in the appellant's title or claim to the properties themselves as private properties. All or practically all the suit properties were acquired before Laxmiprasad's deposition. If then it be said that they were the private property of Laxmiprasad, the appellant can only claim them in some way through Laxmiprasad. But Laxmiprasad released all his claims in the properties to the general assembly in return for a money payment. This release was not to the appellant. It was made before the appellant was even installed on the Gadi. Nor is the appellant the next of kin of Laxmiprasad. As I have already pointed out, Laxmiprasad left a minor son who endeavoured unsuccessfully to carry on the High Court Suit No. 365 of 1912.

2. Counsel was accordingly forced to abandon his original contention which was one of complete private ownership subject to a moral but not any legal obligation to maintain the temple, etc. He accordingly next argued that the suit properties passed from Acharya to Acharya, but that each Acharya had a general power of disposition of both corpus and income inter vivos, and was not accountable as a trustee or at all. But this contention is equally hopeless, for such a devolution of property involves a perpetuity, and can only be valid if it is for a public charitable

purpose. This exception from the law of perpetuities is of general application see *Yeap Cheah Neo v. Ong Cheng Neo* (1875) L.R. 6 P.C. 381 and *Fatmabibi v. The Advocate General of Bombay* ILR (1881) 6 Bom. 42 but the charity must be for the benefit of the public or some section of it see *Cocks v. Manners* (1871) L.R. 12 Eq. 574 In *re Delany : Conoley v. Quick* [1902] 2 Ch. 642 and Transfer of Property Act 1882, Sub-sections 14 and 17. Accordingly Section 92 of the CPC only applies to public trusts.

3. In the result, therefore, counsel had still further to modify his position, and in effect to lay claim to the surplus income only, on the ground that by the practice and usage of this institution the Acharya was entitled to any surplus income after its needs were first satisfied.

4. This argument was again untenable if the general Hindu law applicable to Devasthanams was applied. Nobody disputes that the Acharya has to be maintained in a manner befitting his high position, and that generally speaking the priests at Devasthanams are entitled to certain emoluments. But the real difference between the contending parties is that the respondents say that the trust is for the institution subject to the burden of maintaining the Acharya, while the appellant contends that the trust is for the Acharya subject to the burden of maintaining the institution.

5. In *Girjanund Datta Jha v. Sailajanund Datta Jha* ILR (1896) Cal. 645 the general question was carefully considered as regards Devasthanams, and the decision of the Court was that under the general Hindu law the surplus income belonged to the temple and not to the priest, and that the latter was not even entitled to provide for his family except such helpless and dependent members whom under ordinary Hindu law he would be bound to maintain (see pages 656, 662).

6. The appellant contends that the present institution really resembles a Math and not a Devasthanam, and that he, the Acharya, is head or Mahant of the Math. For reasons which I will mention later, I do not think this is the correct view, but even assuming for the sake of argument that it is, we have fortunately a clear and recent ruling of their Lordships of the Privy Council on this very point, viz., as to the surplus income of a Math. In *Arunachellam Chetty v. Venkatachalapathi*. (1919) 22 Bom. L.R. 457 their Lordships held in effect, first, that in general the nature of the ownership of the preceptor or head is an ownership in trust for the institution itself, and secondly, that while the ownership is generally with the spiritual head of the institution this may vary by the usage and custom of any particular Math. The judgment of the Board was delivered by Lord Shaw, and at p. 474 he said as follows :

Two propositions may be cited as now expressing the general state of the law with regard to these institutions. In the first place, the nature of the ownership is an ownership in trust for the institution itself. Secondly, while it may no doubt be true that the ownership in the general case is with the spiritual head of the

institution, still, to use the language of Sir Charlea Turner in *Sammantha Pandara v. Sellappa Ghetti* ILR (1879) Mad. 175 We do not, of course, mean to lay it down that...the property may not in some cases be held on different conditions and subject to different incidents". As pointed out in *Ram Parkash Das*" case, there are varieties of circumstances and tenure, and in respect to these the usage and custom of the Mutt falls to be determined. Once that usage and custom are clear they form the law of the Mutt.

7. The question of surplus income was dealt with at page 476 as follows:

A further objection [to the decree] arises from the latter portion thereof, under which it is declared that the gurukkul is further entitled to the entire beneficial enjoyment of the income of the said villages during his life and continuance as the spiritual head of the institution, subject only to the maintenance of the said institution, etc. A ready test of the application of this is with regard to the accumulated income, amounting to Rs. 20,000, or thereby, now in the hands of the Receiver. Under the decree quoted the gurukkal would be entitled to instant possession and entire beneficial enjoyment of that sum. If the present purposes of the Mutt did not consume it, he could employ it for his personal use quite apart from the dignity of his office. It is plain to their Lordships that this would be not only a subversion of the usage and custom of the Mutt, but would be a violation of the law applicable to such institutions. A fair test to be applied in such cases is to demand what is the true principle or nature of the administration of surplus income. It is, of course, the duty of a trustee to refrain from the personal enjoyment of such surplus and to add the same to the capital of the estate to be administered; and this law also applies to the property of a mutt or asthal, and that whether the title to the same is in the gurukkal as spiritual head of the institution -which is an ordinary case-or is in trustees like the Chetties according to the usage and custom of the institution as in the present case This law appears to have been complied with by the defendants and their predecessors during the past history of this institution, and should be continued. This would not be done by an affirmance of the decree of either of the Courts below.

The view of the High Court on this topic was even stronger than that of the Subordinate Judge. The plaintiff was declared to be entitled solely to possession and enjoyment of the village, and as head of the Mutt to be "entitled to draw the surplus income realized by the Receiver and deposited by him to the credit of the suit, and also to receive from the Receiver any further surplus income which may have been realised by him subsequently." In their Lordships" opinion this declaration cannot be made.

8. This decision followed that of the Privy Council in 43 M.I.A. 73 (Privy Council) that although large administrative powers are undoubtedly vested in the reigning Mahant or head, the trust did exist and must be respected; and at p. 90 that the Mahant was not only a spiritual preceptor, but also a trustee in respect of the Asthal over which he presided. The case of 43 M.I.A. 73 (Privy Council) was also

followed in another Privy Council case *Basudeo Roy Vs. Mahant Jugul Kishwar*, There, after quoting the judgment in *Ram Parkash Das v. Anand Das*, it was held that though the property of the Asthal was granted to an individual "it was burdened with an explicit and unambiguous trust;" that the suit village attached to the Asthal was endowed property subject to the trust set out in the grant, "and that all acquisitions with the income thereof are subject to the same trust" (p. 1093). This latter finding arose because of the argument that the Mahant for the time being was absolutely entitled to the income of the property attached to the Asthal, and that any property bought out of such income became the personal property of the Mahant.

9. The appellant strenuously contended, first, that these three decisions of the Privy Council were in effect overruled by their Lordships' later decision in *Vidya Varuthi Thirtha v. Balusami Ayyar* where many of the previous decisions as to the legal position of a Mahant were considered, and secondly, that whatever the general law as to the position of a Mahant might be, this might be varied in any particular Math by proof of a different usage and practice. This second proposition I accept. It is only what is stated in *Arunachellam Chetty v. Venkatachalapathi* (1919) 22 Bom. L.R. 457 and long before that in *Greedharee Doss v. Nundokissore Doss*, Mohunt (1867) 11 M.I.A. 405.

10. But the first proposition led to a startling argument. If I understood counsel rightly, his contention amounted to this that the case of *Vidya Varuthi Thirtha v. Balusami Ayyar*, after reviewing Hindu and Mahomedan law generally as to the legal position of a Mahant, Shebait or Mutawalli, laid it down that none of them are trustees unless property has been specifically conveyed to them upon trust for express purposes ; that their true position is that of managers whose obligations being moral only and not legal cannot be enforced in a Court of law; and that consequently no suit u/s 92 lies against such a Mahant, Shebait. or Mutawalli.

11. I venture to think that nobody would be more surprised than their Lordships by the construction thus put upon their decision in *Vidya Varuthi Thirtha's* case. That decision depended upon whether the Mahant of a particular Math was a trustee within the meaning of Article 184 of the Indian Limitation Act, 1908. The facts there were that the original grant of the Math was made by one of the Naickin dynasty of Madura and its exact terms were not in evidence (p. 309 and p. 327), but it was admitted that each Mahant was entitled absolutely to all the income during his tenure of office and none had a right to question him about it (p. 308); that Mahant A had granted certain property of the institution to a relative on a permanent lease at a shall quit rent (p. 306) ; and that this relative sued the succeeding Mahant B for possession, and relied for that purpose on the grant as being a conveyance by a trustee under Article 134, and so giving him a title under the Indian Limitation Act.

12. It was a case, therefore, of an attempt to deprive a religious institution of its property. The attempt failed, for it was held in effect that Article 134 only applied

to an express trustee and that Mahant A was not such an express trustee. Consequently time did not run in favour of his relative. Mahant A could at most make a grant for the term of his own life and on his death that grant determined. It was never even suggested that the Mahant could put the proceeds of the corpus of the Math property into his own pocket; or that no suit would lie against him as a constructive trustee u/s 92. On the contrary at page 311 it was said:

Colleges and monasteries under the names of math were founded under spiritual teachers of recognised sanctity. Those men had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage—When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. called by whatever name, he is only the manager and custodian of the idol or the institution, in almost every case he is given the right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or dated in him, nor is he a "trustee" in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in fine general sense for mal-ad-ministration

13. We were referred to p. 309 where it is said their Lordships used the term "trustee" in a general sense as in previous decisions of the Board by way of compendious expression to convey a general conception of these obligations. Counsel asked us to hold that the word "obligations" there and also at p 311 meant moral obligations only. This I entirely decline to do. I have no doubt their Lordships were using the word in its usual sense in a Court of law. Otherwise we should get Urns startling result, viz., that in the present case the Acharya would only be subject to the moral obligation of maintaining the temples and institution according to established usage, and could not be obliged for instance to mend holes in the temple roofs or to repair other structural damage.

14. Counsel's argument is also open to another objection, viz., that if this decision was so far-reaching as he contends, it was obiter in so far as it reflected on cases not depending on the Indian Limitation Act. Their Lordships' decisions in *Basudeo Roy Vs. Mahant Jugul Kishwar*, and *Arunachellam Chetty v. Venkatachalapathi* (1919) 22 Bom. L.R. 457 for instance, were never even cited. But I need not consider that. Sitting as an Indian Judge, I am not particularly concerned in the present case as to the precise meaning attached to the word "trustee" in the English Courts. What I am concerned with is the meaning given to it by the law of India, and in particular by Section 92 of the Civil Procedure Code. I will not attempt any definition, but as I read Section 92, a constructive trustee would include a person holding a particular fiduciary position whose obligations as such can be enforced in a Court of law. That being so, a Mahant, Shebait, or Mutawalli would ordinarily seem to be a constructive trustee u/s 92, for his fiduciary position would be that of a manager or custodian of property held for public purposes "of a charitable or religious nature."

15. Stress was laid on p. 315 of the judgment in *Vidya Varuthi Thirtha v. Balusami Ayyar* that this must be read with the rest of the judgment and in particular with page 319, where it is said:

Of course, a Hindu or a Mahomedan may "convey in trust" his specific property to a particular individual for a specific and definite purpose, and place himself expressly under the English Law when the person to whom the legal ownership is transferred would become a trustee in the specific sense of the term.

16. And as regards the statement on page 315 that "neither under the Hindu law nor in the Mahomedan system is any property conveyed to a shebait or a mutawalli, in the case of a dedication," this must I think refer to what is described at page 311 with reference to Hindu law as "the Hindu system pure and simple," and does not necessarily mean modern Hindu law including for instance Statutes such as the Hindu Wills Act or the Charitable and Religious Trusts Act, 1920. The Shebait may, I take it, be such an express trustee as is mentioned at page 315 if land is expressly conveyed to him for a specific purpose. In the present case, for instance, the grants of land are exhibited by the hundreds, and large numbers of these are to the Acharya as such for some express purpose. So, too, in the *Dawoodi Borah* litigation, *Advocate General of Bombay v. Yusufalli* (1921) 24 Bom. L.R. 1060 many wakfs were accompanied by express deeds of trust; and one particularly interesting exhibit was a deed of wakf of land in Mecca itself, which the Mecca Courts established in unopposed proceedings bearing a distinct resemblance to the old English fine and recovery.

17. Another example is *Basudeo Roy Vs. Mahant Jugul Kishwar*, where the judgment of the Board is given by Mr. Ameer Ali who also delivered the judgment in *Vidya Varuthi Thirtha v. Balusami Ayyar*. And as regards what is said in the latter case as to trusts being originally unknown to Hindu law and as having been first introduced into India by Mahomedan law, some analogy may be found in the history of the law of England. Trusts were not part of the original English Common Law system pure and simple. On the contrary they were gradually introduced into our legal system first by the long arm of the Lord Chancellor who was in those early days an ecclesiastic and later on by our Courts of Equity. And the reason for that introduction was because the Common Law Courts recognised the legal owner as the sole owner, and only gave for or against him certain very limited remedies, which did not include for instance anything in the nature of a suit for breach of trust by the equitable owner. Nor in England is it absolutely essential that there should be a trust before a charity can be established. Money may be given to charity generally, and in that case the King as *parens patriae* is the constitutional trustee and disposes of the fund under the sign manual. (See *Moggridge v. Thackwell* (1802) 7 Ves. 36; *General* (1903) 1 Ch. 83; Halsbury, Vol. IV, pp. 168 and 287; and *Tudor's Charitable Trusts*, Third Edition, p. 124). No doubt that class of cases is rare now-a-days because in most cases there is an express or constructive trust. But it is occasionally met with in England.

18. I have dealt with this decision in *Vidya Varuthi Thirtha v. Balusami Ayyar* at

length because of the prominence it occupied in the arguments for the appellant. It was described as his sheet anchor coupled with *Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami* ILR (1904) Mad. 435 which was said to be thereby re-established and extended. As already indicated, I think that *Vidya Varuthi Thirtha's* case does not really conflict with *Arunachellam Chetty v. Venkatachalapathi* (1919) 22 Bom. L.R. 457 *Basudeo Roy Vs. Mahant Jugul Kishwar*, and 21 CWN 225 (Privy Council) but in any event, I prefer to take these three Privy Council cases as our guide on questions of principle in the present case, for they were decisions on ex-press points such as the right to surplus income, whereas *Vidya Varuthi Thirtha's* case was merely a decision on that troublesome Act the Indian Limitation Act. A still later decision of the Privy Council in AIR 1922 325 (Privy Council) deals with the position of a Dharmakarta of a Hindu temple. He is "literally and no more than the manager of a charity, and his rights, apart it may be in certain Circumstances from the question of personal support, are never in a higher legal category than that of a mere trustee" (p. 251), and as regards the onus of proof where the manager claims the property as his own it is said at p. 246:

Their Lordships must dissent entirely from the view that where the discoverable origins of property show it to be trust property the onus of establishing that it must have illegitimately come into the trustee's own right rests upon the beneficiaries. Upon the contrary, the onus is, and is heavily upon the trustee to show by the dearest and most unimpeachable evidence the legitimacy of his personal acquisition.

19. I do not overlook the fact that the Board pointed out at p. 251 that a Shebait or a head of a Math has a higher position than a Dharmakarta, but the principles laid down are none the less valuable, more especially as the Acharya is not the exact counter-part of a Shebait or Mahant.

20. [His Lordship then turned to an examination of usage and practice of the usage and after discussing at great length the documents and other evidence bearing on the point summed up his conclusions as follows:?] I have now dealt with the main facts of the case. I regret the details this has involved, because there is a risk alike for the Judge as for counsel and litigant in the details obscuring the relevant principles Case AIR 1922 325 (Privy Council) . But the arguments presented to us have been both able and earnest, and in deference to those arguments and to the importance of the case to this large sect, I have preferred to give a detailed judgment. After carefully weighing those arguments and the facts before us, I have come clearly to the conclusion that the learned Judge was correct in holding that apart from *Nam Vero* and *Bhets* the Acharya was a trustee of the suit properties for public purposes of a charitable and religious nature. Consequently in my judgment the Appeal No. 62 of 1919 of the Acharya on this part of the case fails and should be dismissed.

21. I now come to the plaintiffs' cross-objections dated June 9, 1919, as regards *Nam Vero* and *Bhets*.

22. His Lordship next dealt with the evidence on this point and concluded as follows : Weighing than the evidence as a whole, I am of opinion that the usage and practice in the southern diocese is to treat the Nam Vero and Bhets as part of the general funds of the institution Accordingly in my judgment the Acharya is not the absolute owner of these funds, but is only entitled to be maintained out of them, and any surplus must be applied for the general purposes of the institution. On the other hand, I am of opinion that if these funds should prove insufficient for his maintenance, he would be entitled to have the deficit made good out of the general funds. And when I refer to his maintenance I include the reasonable maintenance of his wife and minor children (if any). In the result, therefore, I would allow the cross-objections of the plaintiffs on this point, and vary the decree of the lower Court by including as part of the charity property both Nam Vero and Bhets and any accumulations thereof.

Pratt, J.

23. After a few preliminary remarks the judgment went on : The character of the Institution has been very fully described in the judgment of the lower Court and in the judgment of Knight J. then District Judge of Ahmedabad in the suit with reference to the similar Institution in that town. It is not necessary further to discuss the character of the Institution. The Acharya strongly contends that the Institution is more a Math than a temple and that the law of Maths applies to it. I am quite ready to concede this point in his favour.

24. Mr. Jayakar then raises a preliminary objection that if the law of Math applies, the suit under e. 92, Civil Procedure Code, is not maintainable. He argues that the jural relation of the Acharya to the Math is not that of a trustee but is something difficult to define in terms of western jurisprudence. He relies on the Privy Council judginont in *Vidya Varuthi Thirtha v. Balusami Ayyar* .

25. In that case the Mahant of a Math was sued by persons to whom property of the Math had been wrongfully alienated by a predecessor of the Mahant. They claimed to have acquired a title by prescription under Article 134 of the Indian Limitation Act. It was held that the Mahant of a Math was not a declared or express trustee and that Article 134 did not apply. This conclusion was expressed by Mr. Ameer Ali after review of the case law on Hindu and Mahomedan pious institutions in the following passage from the judgment:

From the above review of the general law relating to Hindu and Mahomedan pious Institutions it would prima facie follow that an alienation by a manager or superior by whatever name called cannot be treated as the act of a trustee" to whom property has been "conveyed in trust" and who by virtue thereof has the capacity vested in him which is possessed by a "trustee" in the English Law. Of course, a Hindu or a Mahomedan may "convey in trust" a specific property to a particular individual for a specific and definite purpose, and place himself expressly under the English law when the person to whom the legal ownership is transferred would become a trustee in the specific sense of the term.

26. It is true that the Mahant or manager of a Math is not a trustee in the strict sense of the term when used of an express or declared trust or a trust as defined in Section 3 of the Indian Trusts Act where the ownership of the subject matter is vested in the trustee. It would be more accurate to describe him as occupying a fiduciary position. This fiduciary relationship is commonly called an implied trust but the implied trustee is subject to the same obligations as the express or declared trustee. A common instance of this relationship which implies a trust is the guardianship of an infant's estate and in *Prosunno Kumari Debya v. Golab Chand Baboo* 1875 L.R. 2 I.A 145 the Privy Council compared the Sebait of an idol to the manager of an infant heir. No doubt Mr. Ameer Ali did refer to the fundamental difference between the judicial conceptions on which the English law relating to trusts is based and those which form the foundations of the Hindu and Mahomedan systems. But with all respect this is mere obiter and the judgment of West J. in the *Dakore Temple case*, *Manohar Ganesh Tambekar v. Lakhmiram Govindram* I.L.R (1887) 12 Bom. 247 there is nothing peculiar to the Hindu system of jurisprudence in the conception of property being vested in an ideal person. The ease of *Vidya Varuthi Thirtha v. Balusami Ayyar* lends no support to the contention that the spiritual head of a Math does not occupy a fiduciary position and is not liable to suit u/s 92. The section includes constructive trustees and a direct authority for the application of the section is the case of *Anand Rao v. Ramdas Daduram* (1920) L.R. 48 IndAp 12.

27. In the case of a Math as in the case of a temple the ownership is in an ideal person. In the one case it is the idol in the other case it is the office of the spiritual head. The individual who holds the office is trustee for the office, the Gadi, the Math or the Institution. The succession to the property follows with the succession to the office. This is the general law as to Maths as laid down in the cases of 43 M.I.A. 73 (Privy Council) and *Arunachellam Chett v. Venkatachalaputhi* (1919) 22 Bom. L.R. 457. The latter case, however, admits exceptions and states that "there are varieties of circumstances and tenure, and in respect to these the usage and custom of the Math falls to be determined. Once that usage and custom are clear they form the law of the Math."

28. Mr. Jayakar's case is that this Institution is one of these Maths of exceptional tenure and he claims for the Acharya the status of a life tenant and beneficial owner. These phrases smack very strongly of the judgments of the Madras Judges in *Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami* ILR (1904) Mad. 435 condemned by Privy Council in *Vidya Varuthi's* casts. Mr. Jayakar has paid lip service to the Privy Council and has refrained from uttering the words "Bishop" or "Corporation sole." He illustrates the status of the Acharya by comparing him to a ruling chief. But there is in fact no real distinction. The ruling chief is preferred to the Bishop because he is Swadeshi and not subject to Mr. Ameer Ali's censure as "a conception borrowed from abroad," But in truth he is like the Bishop a corporation sole; and in other respects the analogy is unfortunate for it introduces the element of sovereign rights.

29. Now the onus of proving the exceptional tenure is on him who alleges it. What rights does the Acharya claim? He first filed a prolix and argumentative written statement in which he claimed that the property in suit was "his own property" and "that the same was not public charitable property" (Exhibit 40). At the close of the trial in the lower Court he amended that written statement and pleaded that "he is owner of the properties in suit subject to the charge of maintaining the Institution." Yet the judgment of the lower Court shows that the argument of his learned pleader was altogether inconsistent with this pleading for Mr. Rao contended that some of the suit properties was the private property of the Acharya and that as to the rest the charge of maintaining the Institution was not a charge but a moral obligation. We, therefore, asked Mr. Jayakar if he wished to further amend his pleading or define his case. He preferred not to do so but to rest on the case as presented in argument to the lower Court. But after an argument lasting over a week it is still not clear whether he claims that the general duty to maintain the Institution is a legal or a moral obligation.

30. This amendment of the original written statement, this nebulous argument, and this reluctance to be confined within the bounds of a formal pleading, throw much suspicion on the bona fides of the defendant's case. If there is a usage and practice in defeasance of the general law of the Math it is one which the defendant has much difficulty in defining.

31. I think the easiest way of dealing with the defendant's case is to state what then properties in suit, are and to consider the defendant's claims in respect of it first as to corpus and then as to income.

32. [At this point his Lordship went into the facts of the case and concluded his judgment as follows] I think the income of the Nam Vero tax and the Bhets offered to the Acharya are also property of the Institution but subject to a first charge for the maintenance of the Acharya. In other words the charge on the rest of the property for the maintenance of the Acharya would not attach unless and until this fund proved insufficient for the purpose.

33. I have now dealt with the claim to corpus and my conclusion is that as to the whole of the corpus including the Nam Vero and Bhets the ownership is in the Institution and the Acharya is the manager. On that finding it is scarcely necessary to consider the claim that is made to surplus income as the private property of the Acharyas. The Corpus belongs to the Institution, and the income therefore belongs to the Institution. There is no evidence that the surplus income is differently treated. The accountant, as I have already said, admits that the surplus of each year is carried over in the accounts of the Institution to be the opening balance of the next year. That this is the general law of Maths appears from the pan ultimate paragraph of Lord Shaw's judgment in Arunuehallam's case.

34. I, therefore, find that the usage and practice set Up by the respondent appellant is not proved and that the property is that of the Institution and that

the Acharya in his secular capacity is its manager.

35. After hearing further arguments, their Lordships sanctioned the following scheme of management, on December 22, 1922.

Scheme for the management of the property pertaining to the Temple of Shri Laxmi Narayan Dev of Vadatal and the Temples subordinate thereto.

Management of property.

1. The property aforesaid shall be managed by the Acharya with the assistance of a Committee in accordance with the provisions of this Scheme.

Committee.

2. The Committee shall consist of eight Satsangis as follows:

(a) Kothari for the time being of the Vadatal Temple who shall hold office by virtue of his appointment by the Acharya as Kothari.

(b) Four Grahasthas and three Ascetics, viz., one Brahmachari, one Pala and one Sadhu, nominated, appointed or elected as hereinafter provided and hereinafter referred to as Chosen Members.

Provisions relating to Committee other than the Kothari.

3. The first Chosen Members shall be appointed by the District Judge of Ahmedabad whose decision shall be final.

Grahasthas.

(1)(Name). (2)(Name). (3)(Name). (4)(Name).

Ascetics.

(1) Brahmachari. (Name). (2) Pala (Name)(3) Sadhu (Name). They shall, subject as hereinafter provided, hold office until the first Election.

4. The first Election shall take place at the Samaya in Chaitra Samvat 1926 A. D. and subsequent Elections shall take place at the Samaya in Chaitra in every successive period of three years after the first Election.

Every Election shall be held at Vadatal.

Subject to the rules hereinafter mentioned the adult male Grahasthas, Brahmacharis, Palas and Sadhus present shall respectively elect their representatives on the Committee.

Retiring Chosen Members shall, subject as hereinafter provided, be eligible for election or re-election.

Such rules shall be framed by the Committee as soon as may be and sanctioned with or without modification by the District Court, Ahmedabad, They may provide that no Grahasthas may vote unless he has subscribed a particular sum to the

funds of the Institution in the preceding year.

5. No person shall be eligible as a Chosen Member

(a) if he is not an adult male;

(b) if he has been convicted of a criminal offence and punished with imprisonment;

(c) if he shall be an undischarged insolvent;

(d) if an Ascetic he is not a Mandal Dhari.

6. Any Chosen Member of the Committee shall vacate his, office

(a) if he is convicted of a criminal offence and punished with imprisonment;

(b) if he is adjudicated an insolvent;

(c) if by reason of mental or bodily infirmity he becomes incapable of acting;

(d) if he shall fail to attend the Meetings of the Committee during a period of twelve consecutive months.

7. In the event of a vacancy occurring by reason of the death, retirement or disqualification (under Clause 6) of any Chosen Member the Committee shall have power to appoint any other qualified person of the class represented by the deceased, retiring or disqualified member, to fill such vacancy but any member so appointed shall hold office only until the next following Election of Chosen Members.

Meetings of the Committee.

8. The Committee shall hold ordinary Meetings at lest four times in each Samvat year, viz., on the Ponam of Magsur, Falgun, Jestha, and Shravan.

At least ten days" notice of the matters to be discussed at each ordinary Meeting shall be given by the Kothari to the remaining Members of the Committee.

The Kothari may on his own motion and shall at the requisition of any two members of the Committee call a Special Meeting.

At least ten days" notice of any Special Meeting shall be given by the Kothari to all the remaining Members of the Committee and such notice shall state the matters to be discussed thereat.

9. There shall be a quorum when three Members of the Committee are present at any Meeting.

10. The Kothari, if present, shall be the Chairman at each Meeting. In the absence of the Kothari the Members present shall elect their own Chairman for the Meeting. Every question shall be determined by a majority of the members present and voting on the question. Each member shall have one vote only on

each question but in the event of a tie the Chairman shall have a casting vote even if he has voted previously on the same question.

11. If a quorum is not present at any Meeting, the Meeting shall stand adjourned to the same day two weeks thereafter and notice of the adjourned Meeting shall forthwith be given to every member.

If at such adjourned Meeting a quorum is not present the members present shall be a quorum and may transact the business which the Meeting was intended to transact.

12. A book shall be kept wherein shall be recorded accurate minutes of the proceedings of the Committee.

13. Every notice shall be deemed to have been given within four days after the same has been posted at Vadtal to the last known address of the addressee.

14. The Committee shall be entitled at the expense of the Institution to engage a competent staff to assist them in their duties.

15. Every member of the Committee shall be entitled at the expense of the Institution to reasonable travelling expenses to and from Vadtal incurred for the purposes of attending any Meeting of the Committee.

Committee's power of control.

16. The Committee shall have the following powers of control over the management of the Acharya:

(1) All personal expenditure on account of the Acharya in excess of the sum of Rs. 2,000 a month shall be subject to their sanction.

The term "personal expenditure" shall not include either

a. the expenses of his household (including expenses upon residence, food, clothing, servants, horses, carriages and elephant as hitherto met out of the funds of the Institution;

b. any customary expenditure on official tours or on other official occasions.

2. All alienations by the Acharya of the property of the Institution whether by way of sale, exchange, or otherwise shall be subject to their sanction, but this sub-clause shall not apply to alienations of produce or cattle.

3. All maintenance allowances made by the Acharya to any of his relatives shall be subject to their sanction.

4. No resolution of the Committee in any matter appertaining to the management of the property or the internal economy of the Institution shall be disregarded by the Acharya except for reasons to be recorded in writing and communicated to the Committee.

## Inventory.

17. The Kothari and such person as may be appointed by the Committee shall conjointly make an inventory of all the properties and assets of the Institution wherever situate.

The Inventory shall be signed by the persons making it and shall be counter-signed by the Acharya.

The Inventory shall be kept at Vadtal and shall be open at all reasonable times to the inspection of any Satsangi.

## Custody and disposal of certain property.

18. All moneys invested on Mortgage or other Security (other than Securities mentioned in clause 24) or without Security shall be recovered with all due despatch and no investments of a like kind shall again be made, the choice of investments for the future being restricted to those mentioned in Clause 24.

19. All gold and silver whether in the shape of bars, ornaments or otherwise, other than ornaments customarily used, whether daily or occasionally.

(a) for the idols at Vadtal or elsewhere, or (b) by the Acharya, shall be sold with all due despatch.

20. All title deeds, all gold and silver ornaments at Vadtal excepted under Clause 19 and, subject as hereinafter provided, all cash at Vadtal shall be kept by the Acharya in the custody of the Kothari in the Vadtal Temple Treasury.

21. All gold and silver ornaments, excepted under Clause 19, at temples of the Institution other than the Vadtal Temple, and, subject as hereinafter provided, all cash at such temples shall be kept by the Acharya in the custody of the respective Kotharis or other persons (appointed by the Acharya) in charge of such temples in the respective Temple Treasuries.

22. Save with the sanction of the Committee no cash shall be kept in the various Temple Treasuries in excess of the amounts specified below:

|     |     |                   |        |                 |       |                  |       |                |
|-----|-----|-------------------|--------|-----------------|-------|------------------|-------|----------------|
| Rs. | Rs. | 1. Vadtal ...     | 10,000 | 10. Gondal ...  | 200   | 2. Bombay ...    | 2,000 | 11.            |
|     |     | Manandar ...      | 100    | 3. Surat ...    | 2,000 | 12. Obancd ...   | 100   | 4. Dholera ... |
|     |     | 5. Broach ...     | 2,000  | 14. Dakhan ...  | 400   | 6. Sarangpur ... | 1,000 | 13.            |
|     |     | 15. Gadada ...    | 10,000 | 7. Junagadh ... | 8,000 | 16. Baroda ...   | 2,000 | 8. Cambay ...  |
|     |     | 17. Jamnagar .... | 400    | 9. Padgi ...    | 600   |                  |       |                |

23. All cash in excess of what may be allowed under Clause 22 to be kept at the various Temple Treasuries shall be deposited with the Imperial Bank of India at Ahmedabad to the credit of an account in the name of the Acharya or, if the rules of the Bank permit, to the credit of an account in the name of the Institution to be operated on by cheques drawn by the Acharya.

## Investment.

24. All cash not required for the immediate purposes of the Institution shall be invested in Securities of the Government of India or the Government of Bombay.

25. All Securities shall be deposited with the Imperial Bank of India at Ahmedabad in the name of the Institution.

#### Accounts.

26. At each temple proper accounts of all receipts and expenditure shall be kept and for such purposes the following books of account shall be kept.

(1) Cash Book (Rokad.)

(2) Auro (Monthly Rozmel.)

(3) Nondh (Daily Journal.)

(4) Ledger containing separate Khatas for each head of income and expenditure including all expenditure on account of Tyagis.

The ledger kept at the Vadtal Temple shall also contain separate Khatas of

(a) Nam Vero and Bhets ;

(b) the household expenditure on account of the Acharya ;

(c) any expenditure incurred on account of the Acharya on official tours and other official occasions; and

(d) what may be paid to the Acharya on account of his personal expenditure but not of such personal expenditure.

27. At the close of each month a statement of receipts expenditure at each temple shall be made out by the Kothari or other person (appointed by the Acharya) in charge. Such statements shall be placed before the Committee at the Quarterly Meetings

28. At the close of each Samvat year a separate Financial Statement and Balance Sheet shall be drawn up in regard to each Temple and in regard to the whole Institution. Copies of such Statements and Balance Sheets shall be furnished to each member of the Committee by the Kothari before the first Quarterly Meeting of the following year and such Balance Sheets and Statements shall be checked and passed by the Committee at such Meeting.

The Committee shall thereafter cause such Balance Sheets and Statements to be printed and circulated amongst the Satsangis attending the ensuing Samaya in Chaitra.

29. All books of account and vouchers shall be open to the inspection of each member of the Committee and of any Satsangi authorised by the Committee.

#### Miscellaneous.

30. Food, clothing and travelling allowances shall be made to Tyagis in accordance with the practice prevailing before this Scheme came into operation. Any additional necessary expense not exceeding Rs. 5 in any month to any Tyagi shall be met by the Kothari if certified on and recommended by a chit issued by a representative or representatives appointed by the Committee.

Any expenditure in excess of the above shall be notified by the Kothari to the Acharya for his directions and orders.

31. Unless there is anything repugnant in the subject or context

Kothari means the Kothari of the Vadtal Temple for the time being.

Year means year according to the Gujarati Calendar.

Month means month according to the Gujarati Calendar.

Where anything is directed to be done under this Scheme it shall be done from time to time as occasion may require.

32. Liberty is reserved to the Acharya or to any member of the Committee to apply to the District Court, Ahmedabad, in reference to the carrying out of the directions contained in this Scheme.

33. Liberty is reserved to the Acharya or to any member of the Committee to apply to the High Court of Judicature at Bombay for any modification of this Scheme.

34. Subject to the provisions of this Scheme, the powers of Management of the Acharya shall be in accordance with the Lekh.