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however, did not attend to receive the money, and in fact the loan has never been advanced. The money was next day paid in again to the plaintiff's bankers, where it has ever since been bearing interest at the rate of 6 *per cent.*

Under these circumstances to what damages is the plaintiff entitled? He is clearly entitled to recover the expenses which he has incurred in preparing the necessary deeds. These expenses are proved to have amounted to Rs. 200. But he claims, in addition, one and a half *per cent. per annum* on the Rs. 20,000 for the period of three years for which the loan was to be made. That is the difference between the rate agreed upon in the contract and the rate which is allowed by his bankers, with whom the money lies deposited. I do not think he is entitled to interest for three years. I think he is only entitled to interest for the time required to find another borrower of his Rs. 20,000 at the same rate which the defendant agreed to pay. There is some difficulty, of course, in fixing the time necessary for this. It must be to a certain extent a matter of conjecture. The amount to be lent must be taken into consideration; for it is clear that the larger the sum offered, the longer the time that would be required to find a borrower. It would, no doubt, be easier to find a borrower of Rs. 20,000 than to find a borrower of two lakhs. The plaintiff appears to have lent Rs. 6,000 in April, Rs. 7,500 in July, and Rs. 20,000 yesterday. I think four months in this case would be a reasonable time. I have no doubt that the plaintiff with the assistance of a broker could within that period have found a person willing to take his Rs. 20,000 on loan at 7½ *per cent.* interest. I think that, under s. 74 of the Contract Act, I have a discretion in awarding damages, and I accordingly award him Rs. 100, which is 1½ *per cent.* on Rs. 20,000 for four months, together with the sum of Rs. 200, which is the amount of expenses which he has incurred.

Attorneys for the plaintiff.—Messrs. *Thakurdas and Dharamsi.*

Attorneys for the defendant.—Messrs. *Bomanji and Hormasji.*

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[247] APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

MANOHAR GANESH TAMBEKAR AND OTHERS (*Original Plaintiffs*), *Appellants v.* LAKHMIRAM GOVINDRAM AND OTHERS (*Original Defendants*), *Respondents.** [3rd May, 1887.]

Charity—Public charity—Trust—Public charitable or religious trust—Offerings made to an idol—Liability of persons in possession of an idol's property—Account—Jurisdiction of Civil Courts in cases relating to public charities—Right to sue—Civil Procedure Code (Act X of 1877), s. 539—"Direct interest", meaning of—Practice—Application to put in evidence in appeal which applicant refused to produce at first hearing.

1. A trust for a Hindu idol and temple is to be regarded in India as one created "for public charitable purposes," within the meaning of s. 539 of the Code of Civil Procedure (Act X of 1877).

2. The Hindu law recognizes not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations. A Hindu who wishes to establish a religious, or charitable institution may, according to his law, express his purpose

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and endow it, and the ruler will give effect to the bounty, or at least protect it. A trust is not required for this purpose as it is by English law.

3. Those who take charge of gifts made to a religious or charitable institution —whether such gifts consist of cash, jewels, or land—incur thereby a responsibility for their due application to the purposes of the institution. They are answerable as trustees would be, even though they have not consciously accepted a trust; and a remedy may be sought against them for mal-administration by a suit open to any one interested as under the Roman system in a like case by means of a *popularis actio*.

The plaintiffs, as relators, filed this suit, under s. 539 of the Code of Civil Procedure (Act X of 1877), against the defendants as trustees of the temple of Shri Ranchhod Raiji at Dakor. The plaintiffs were five in number. The first plaintiff was the hereditary manager of the temple and its appendant villages. The other plaintiffs were priests residing at Dakor, who ordinarily took charge of pilgrims visiting the shrine, and performed worship of the idol on their behalf. The defendants were the *shevaks* or ministers of the idol—about one hundred and fifty in number—who took office by hereditary descent. They remained in constant attendance on the idol, performed the daily services at the temple, collected all the offerings made at the shrine, and kept them in a *bhandar* or store-room.

The god Shri Ranchhod Raiji was held in great veneration by the followers of the Vaishnava religion throughout Western India. Every full moon, thousands of pilgrims resorted to the shrine, and made offerings to the deity, of cash, ornaments, clothes and other articles, amounting in value to about a lakh of rupees [248] in the course of a year. Besides these offerings the temple enjoyed a grant, in perpetuity, of the revenues of several *inam* villages, of which Dakor and Kanjri yielded the largest income.

The plaintiffs sued as persons interested in the maintenance of this public religious and charitable institution, and prayed that the Court would make the defendants, as recipients of the offerings at the idol's shrine, accountable, as trustees, for the right disposal of the property thus acquired. The plaintiffs alleged that the income of the temple had largely increased, and had been wrongly appropriated by the defendants to their personal purposes. They, therefore, prayed for an account, for the appointment of a receiver, for the removal of the *shevaks* from their office, and for the settlement of a scheme of future management.

The defendants answered (*inter alia*) that the plaintiffs had not such a direct interest in the institution as to entitle them to sue under s. 539 of Act X of 1877; that they themselves were owners of the idol and of the idol's property, and that, as such, they were not liable to render an account of the offerings they had collected at the shrine. They also contended that they were not liable to be removed from their offices, which they and their ancestors had held for several centuries past.

The District Judge dismissed the suit, on the preliminary ground that, except the first plaintiff, who was a hereditary manager of the temple, the other plaintiffs had not such a direct interest in the charity as to entitle them to sue under s. 539 of the Code of Civil Procedure (Act X of 1877).

Held, reversing the decision of the District Judge, that plaintiffs Nos. 2—5, as priests residing at Dakor and taking part in the worship of the idol, were directly interested in its due performance and its maintenance. Though they might not be trustees, they were clearly among those who, in practice, benefited by the execution of the trust. They had thus an undeniable *locus standi* as relators, and the suit could proceed at their instance.

Held, further, that the *shevaks* were not the owners of the offerings made to the idol. As recipients of those offerings, they were responsible for their due application to the purposes of the foundation. They were liable, as trustees, to render an account of their management.

The Court accordingly directed the District Judge (1) to take steps either by appointing a receiver, or otherwise, in his discretion, for guarding the property of the temple; (2) to take an account of the property and of the receipts and disbursements of the temple; (3) to make the requisite orders for recovering property appropriated by the *shevaks*; and (4) to draw up a scheme for the future management of the temple and its funds, regard being had to the established practice of the institution and to the position of the *shevaks* and of other persons connected with it.

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The jurisdiction of the Civil Courts in matters of this kind discussed.

The plaintiffs had applied, during the hearing of the case in the Court of first instance, for the production of certain books of account of the defendants. The defendants resisted the application, and the Court refused to order the books to be [249] produced. The suit having been dismissed, the plaintiffs appealed, and in the Court of appeal the defendants applied to be permitted to put in evidence the books which they had refused to produce.

Held, that the evidence could not be admitted.

12 B. 247 = 12 Ind. Jur. 387. [**Confirmed**, 24 B. 50 (**P.C**) = 26 I. A. 199; **F.**, 33 B. 387 (391) = 11 Bom. L. R. 389 (394); **Appr.**, 15 B. 309 (318); 15 B. 625 (636); 23 C. 645; 24 C. 418 (427); 25 C. 112; **R.**, 11 A. 18 = 8 A.W.N. 276; 23 B. 659 (664); 28 B. 215; 37 C. 128 = 10 C.L.J. 355 = 14 C.W.N. 18 = 3 Ind. Cas. 642; 27 M. 435 = 14 M. L.J. 105; 8 Bom.L.R. 756; 13 Bom. L. R. 49 = 9 Ind. Cas. 358; 2 C L.J. 460; 9 Ind. Cas. 281 = 20 M.L.J. 969 = 9 M. L. T. 83 = (1911) 2 M. W.N. 154; (1912) M.W.N. 1106; **D.**, 33 M. 75 = 3 Ind. Cas. 737 = 19 M.L.J. 651 = 6 M.L.T. 199.]

APPEAL from the decision of S. H. Phillpots, District Judge of Ahmedabad, in suit No. 23 of 1880.

This was a suit filed with the consent of the Advocate-General, under s. 539 of the Code of Civil Procedure (Act X of 1877), against the defendants as trustees of the temple of Shri Ranchhod Raiji at Dakor.

The plaintiffs were five in number; of these the first plaintiff, Manohar Ganesh Tambekar, was the hereditary manager of the temple. The other plaintiffs were the *gors*, or priests, residing at Dakor, whose duty was to conduct the pilgrims, who were their *yajmans*, or patrons, to the shrine, and perform the worship of the idol on their behalf.

The defendants were a numerous body, (about one hundred and fifty in number), of *shevaks*, or ministers of the idol, succeeding to their offices by hereditary descent; they remained in constant attendance on the idol, performed the daily services, and kept in their custody all the cash, ornaments, clothes, and other offerings dedicated to the deity. They were paid Rs. 150 a year out of the revenues of the foundation.

Evidence was given that the god Shri Ranchhod Raiji was held in great veneration by the followers of the Vaishnava religion throughout Western India. Every full moon, thousands of votaries visited the shrine and made offerings of cash, clothes, ornaments, and other moveable as well as immoveable property, amounting in value, in the course of a year, to about a lakh of rupees.

The temple enjoyed, in perpetuity, the revenues of several villages, of which the principal were Dakor and Kanjri, granted in *inam* by native princes and chiefs for the support of an institution which had been in existence for nearly seven hundred years. The idol's throne has lately been covered with gold and silver by his Highness the Gaekwar at a cost of Rs. 1,25,000.

The present temple was built in 1772 A. D. by Gopal Jagannath Tambekar, ancestor of the first plaintiff, at a cost Rs. 1,00,000. **[250]** Ever since that date the management of the temple and its appendant villages had been carried on by the Tambekar family. In the same year in which the temple was built, the whole body of *shevaks* passed an agreement, in writing, to the manager of the institution, by which they bound themselves to observe certain rules in the performance of the daily services at the temple, and for the preservation of the offerings made to the idol. This agreement (Ex. 4) runs as follows:—

"*Let Shri Ranchhod Raiji be propitious.*

"To

"Shrimant Rajeshri Gopal Nark Tambekar, written by *shevak* Najiram Jaduram and Aditram Vanchidas and Bhuldas Manoredas and Purbhudas

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Maneckji and Velji Rangji and Kalyan Nathji, and the whole body of *shevaks* (officiating priests) of Maiji Dakorji—to wit: for the purpose of the worship and adoration in the temple of Shri Ranchhod Raiji we, the whole body of the *shevaks*, do hereby with our own will and pleasure give in writing that in the temple of the *shriji* (deity) we shall enter after bathing and purifying ourselves and any *yajman*, or patron, whom we may bring in for offering worship will also conform to the same restrictions; we are never to enter the temple, even for a moment, with uncleanliness or without bathing, nor are we to take the *yajman* in that condition. And there are three classes among us, namely, *shrigods*, *kherawals*, and *tapodhans*. Of these three classes each man is to remain in attendance whenever his turn comes on; the *tapodhans* are to enter the temple taking the key and to take the stand there; while the Brahmins of each of the two divisions, one of each, *i.e.*, two at a time, are to do worship and service of the deity, and at the end of eight days the money, presents, and offerings that might have been collected, will be accounted for by those in whose turns they were respectively received, and under no inducement are to misappropriate or steal out of them, and will not permit any violation in the worship and service on any account, and if we do so we are guilty of Shri Ranchhod Raiji, and offenders against the law of the Government. 2ndly. In the cooking of the sacred food for the deity, three persons of the three divisions are to remain [251] there, and not a fourth person can be tolerated there; and if we make any sort of confusion in respect of cooking the victuals, we are offenders against the law of the Government.

"In this manner we *shevaks*, having assembled in a body, have agreed [to the above] of our own pleasure; we and our sons are to observe and conform to this from generation to generation. For all these promises the *shriji* (God) is the guarantee. This agreement will be carried out in the spirit of the word of our father.—Dated and written on Monday, *Chaitra Shud*, 3rd, *Samvat*, 1828 " (A.D. 1772).

* * * * *

"What is written above is true and binding.

"As to the dresses and jewels of Shri Ranchhod Raiji, we are not free to sell in any way. 3rdly. In the village of Dakor, if any Brahmins or Shudras or Jamadars or any person of the whole village or some one of the outside visitors are found to misbehave, or to act in an improper manner, we are never to espouse his or their cause. You can get the punishment he or they deserved, inflicted by the Government. We are not to take their side, and if we should do so, we will be guilty before God (Ranchodji) or before the ruling power. Again, if any one out of the body of our *shevaks* were found to offend in any way, then, too, we are not to join together or make any quarrel; if we do, we are guilty before God, and offenders against the ruling powers."

The plaint alleged that the defendants had frequently acted in contravention of the rules laid down in the aforesaid document, that they had latterly set up a proprietary title to the offerings made at the shrine, that they had appropriated part of those offerings to their own use, and that they refused to render an account of the property held by them in trust for the idol.

The plaintiffs, therefore, prayed as follows:—

1. That an account might be taken, by and under the directions of the Court, of all sums of money, ornaments, cattle, and all other moveable and immoveable property which had come into the hands of the defendants as trustees of the idol.

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[252] 2. That the defendants might be ordered to pay into Court whatever on taking accounts might be found due by them to the funds of the temple.

3. That, if necessary, the defendants might be removed from their office of *shevaks*, or worshippers, and new *shevaks*, or worshippers, be appointed in their stead.

4. That a scheme might be settled by, and under the directions of the Court, for the management of the temple and of the funds thereof.

5. That an injunction might be issued restraining the defendants from removing, alienating, or otherwise disposing of the cash, clothes, ornaments and other moveable as well as immoveable property dedicated to Shri Ranchhod Raiji.

6. That a receiver might be appointed to take charge of the said property of the idol.

7. That all books, papers, and documents relating to the said offerings and to the disposal thereof might be directed to be forthwith brought into the custody of the Court.

In their written statement the defendants replied (*inter alia*), that the plaint was not sufficiently stamped; that the plaintiffs had not such direct interest in the temple, or in the property appurtenant to the temple, as to entitle them to sue under s. 539 of the Code of Civil Procedure (Act X of 1877); that the suit was barred by limitation; that the *shevaks* were not the servants of the temple, but owners of the idol and its property; that as owners and proprietors they and their predecessors had carried on the management of the temple uninterruptedly for more than seven hundred years; that they had never rendered any account of their management to the plaintiff Manohar or his ancestors, or to any other person; that the agreement of A.D. 1772 was not a genuine document, and even if its genuineness were established, it was not binding on them; that they had appropriated to their use such offerings as it had been their practice to appropriate for hundreds of years past; that they were not trustees of the *devasthan*; that they had not abused any trust, and were not liable to be removed from their office and position as *shevaks*; and that [253] the plaintiffs had no right to demand an account of their management.

As to the first objection, that the plaint was not sufficiently stamped, the District Judge held, following the decision of the High Court at a former stage of this case (1), that the plaintiffs were at liberty to fix what sum they pleased, which they had apparently fixed at Rs. 130; but as they alleged three distinct causes of action, and sought three distinct remedies, they were ordered to pay Rs. 10 for each relief sought.

The District Judge, however, dismissed the suit, on the preliminary ground that the plaintiffs Nos. 2—5 had not any direct interest in the trust in question so as to entitle them to sue under s. 539 of the Code of Civil Procedure (Act X of 1877).

With regard to this section he observed as follows:—"There must be two persons having a direct interest in the trust. It is clear that the first plaintiff has such an interest. In Ex. 300 he is styled manager and hereditary patron of the temple, and as the descendant of the builder of the temple in which the idol now is, and as the hereditary manager of the estates belonging to it, and as the supplier from those estates of money and other things for the use of the temple, he has an undoubted direct interest

(1) *Vide* Printed Judgments for 1877, p. 244.

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in the trust; but, as regards the other plaintiffs, the case is very different. They allege in their plaint that they are trustees of the temple, but that is manifestly false; they are only *gors*, or *upadias*, whose duty it is to conduct their clients to worship, to perform certain ceremonies there, and to receive what their clients give them. The only interest they have in the temple is that they get certain sums deposited by their clients before the god, and the only interest they profess to have in the trust is to see that the ornaments and clothes presented by their clients are put on the god at certain times, but this does not make them trustees of the temple. Any Brahmin can be a *gor* if he can only get clients to employ him. The second and fifth plaintiffs have just as much interest in the temple as other Vaishnavas, and no more. It is true a good deal of their income depends on the [254] prosperity of the temple and the repute in which the idol is held, but that pecuniary interest is shared by the lodging housekeepers and shop-keepers of Dakor; and if being interested in the prosperity of the temple made a person a trustee, then the B. B. & C. I. Railway, which gets more money in the year than probably the whole body of *gors* put together, should be a trustee of the temple. *Dhadphale* v. *Gurav*(1) shows that the mere fact that plaintiff has sustained some pecuniary loss from the non-performance of the service of the temple, does not give him a cause of action. And as the Advocate-General's sanction is necessary for a suit of this kind, it is necessary for the plaintiffs to prove the cause of action on which they got that sanction.

"In the plaint, which was sanctioned by the Advocate-General, the plaintiffs Nos. 2, 3, 4, 5, are thus described—'residents of the village of Dakor and trustees of the temple.' It cannot for a moment be argued that every resident of Dakor has a direct interest in the trust; and that the plaintiffs Nos. 2, 3, 4, 5, are trustees of the temple is, as I have above shown, distinctly false."

Against this decision the plaintiffs appealed to the High Court.

Telang (with him *Shantaram Narayan*), for the appellants.

Macpherson (Acting Advocate General) (with him Rav Saheb *Vasudev J. Kirtikar* and *Gokuldas Kahandas Parek*), for the respondents.

Macpherson:—The Court below has disposed of the suit on a preliminary point. It has not recorded its findings on the principal issues. We desire to put in further evidence, consisting principally of our books of account. These books are necessary to establish our case.

Telang:—Even if the books be material, it is too late to put them in. The defendants refused to put them in in the lower Court, and successfully resisted our application for their production.

[WEST, J.—We think the proposed further evidence should not be admitted.]

Telang:—The plaintiffs on behalf of the persons interested in this religious and charitable institution at Dakor claim an [255] account from the defendants, who are the hereditary *shevaks*, or ministers of worship at the temple. The defendants collect the offerings made to the idol, and keep them in a *bhandar* or storehouse. The property in their hands belongs, not to themselves, but to the idol. It is the subject of a religious and charitable trust. *Shevaks* are the trustees.

(1) 6 B. 122.

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As such they cannot appropriate the offerings to their own use. They have bound themselves by Ex. 4, a document passed so far back as A.D. 1772, to preserve the offerings for the use and benefit of the idol. The original of Ex. 4 was produced in a previous litigation between the parties. In execution of a decree against the ancestor of the first plaintiff, two villages belonging to the temple were attached. The *shevaks* sought to raise the attachment; on that occasion the attaching creditor used the original against the *shevaks*, and the attachment was upheld. A certified copy of the original was then filed in a subsequent litigation between the Tambekars and the *shevaks*. The *shevaks* of the present day represent, as a class, the whole body of *shevaks* who had originally passed the document, and against whom it had been used in former litigation. The document is therefore binding on them—*Jenkins* v. *Robertson* (1) and *Anandrao Bhikaji Phadke* v. *Shanker Daji Charya* (2). Under this document the *shevaks* admit their responsibility as trustees holding the offerings for the use and benefit of the deity. In the face of this document it is not open to the *shevaks* to contend that they are owners of the idol and of the idol's property. The idea of ownership set up by the defendants is a wholly novel idea, irreconcileable with the central theory of Hindu law, which regards an idol as a juridical person capable of holding property, and possessing rights which require special protection at the hands of the Sovereign—West and Buhler, (3rd ed.), pp. 185, 201, 203. In *Rupa Jagshet* v. *Krishnaji Govind* (3) it was held that lands granted for the purpose of keeping up the worship of a household idol constituted a religious endowment, and were, therefore, not liable to attachment or sale in execution of a decree against the grantee. The grantee was a **[256]** trustee and not an owner of the dedicated lands. So, too, the *shevaks* must be held to be trustees, and not owners, of the offerings dedicated to the god Shri Ranchhod Raiji. The temple is a public temple, to which large numbers of Vaishnavas resort every full moon and make valuable offerings to the deity. The evidence shows that the ruling authorities have interfered from time to time to guard these offerings against waste and misappropriation. The oral evidence shows that the devotees make offerings for the benefit of the idol, and not of the *shevaks*. The *shevaks* themselves admitted through their pleader in Ex. 242 that they used to divide only small coins offered at the shrine, whilst the rest was reserved for the exclusive use of the deity. In Ex. 264, which is an application made by the *shevaks* to Government for exempting the income of the temple in their hands from the income-tax, they distinctly admit that they divide only the little surplus that remains after providing for the daily worship and ceremonies at the temple. The *status* of the *shevaks* has been already determined and adjudicated upon in former suits between the parties. In S. A. No. 448 of 1870—*Ganpatrav Manohar* v. *Ramadhindas Vimaldas* (4)—it is held that the *shevaks* are not the owners or even managers of the temple, but mere votaries or worshippers of the idol. And this decision is followed in S. A. 245 of 1871—*Gunpatrao Manohar* v. *Anopram Bechar*(5). As votaries, the *shevaks* have no beneficial interest whatsoever in the offerings made to the deity. They are bound to account for all the property they hold in trust for the idol.

(1) L. R. 1 Ap. Ca. (Sc.). 117. (2) 7 B. 323. (3) 9 B. 169.
(4) Printed Judgments for 1874, p. 258.
(5) Printed Judgments for 1879, p. 361.

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Macpherson.—In the previous suits the question as to the ownership of the offerings made at the shrine was not raised or decided. The decisions in those suits have, therefore, no bearing on the points at issue in the present case. We say that the offerings are entirely distinct from the temple and its appendant villages. The offerings at first were not so large as at present. The first object was to provide for the maintenance of the ministers at the shrine. As costly presents came in, the practice arose of storing them for the idol. But this was a [257] practice of an optional character, or merely a moral obligation. The *shevaks* from time to time distributed the gifts among themselves under no limitation except that of prudence and a sense of propriety. The ancestors of the *shevaks* have established the worship and distributed the income among themselves. Exhibit 4 is not proved. Nobody has seen the original, or accounts for its loss. It is not to be found on the record of the case to which reference is made. Nor has it ever been acted upon. It was not produced in the suit of 1834, which we filed against the first plaintiff's ancestor. The documents referred to by the other side merely show that the executive authorities sometimes interfered to prevent disorder or a breach of the peace in the temple. Our witnesses say that the *shevaks* are entitled to take the offerings as representatives of the idol. The donors say that the *shevaks* are the owners of the offerings. The practice at this temple also establishes their right to take the offerings. This practice should be recognized and acted upon. Refers to *Rajah Vurmah Valia* v. *Ravi Vurmah Mutha* (1), and West and Bühler (3rd ed.), p. 201.

JUDGMENT.

WEST, J.—At an early stage of the hearing of the present case we ruled that the defendants, the *shevaks* of the temple at Dakor, could not be allowed now to put in as evidence the account books which they had in the Court of first instance refused to produce. After succeeding in his resistance to the production of documents, a party cannot be allowed, when the hearing has been finished and when his adversary has perhaps been driven to establishing his case on a quite different footing, to turn round and request that the document may be admitted. The precedents cited do not warrant such an indulgence, and it would certainly tend to the encourgement of chicanery and the defeat of justice.

The plaintiffs come forward in the present case in the character of relators as persons interested in the religious foundation of the temple of Dakor dedicated to the deity called Shri Ranchhod Raiji. As persons interested in the maintenance of the institution and the due celebration of the worship, they pray, [258] that the Court will make the defendants, as recipients of the offerings at the idol's shrine, accountable, as trustees, for the right disposal of the property thus acquired. The income of the temple having, as they say, largely increased, and being wrongly or unduly appropriated by the defendants, called generally the *shevaks* (or ministers), to their personal purposes, they pray for the appointment of a receiver for the exaction from the defendants of accounts of their management, for the delivery up by them of all property appertaining to the temple, for an inquiry into their conduct as ministers of the idol, and for the construction of a scheme of future management.

The defendants take the position that they, as a body, are the owners, for all secular purposes, of the idol, whom, in the spiritual sense, they

(1) 4 I.A. 76.

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serve. The offerings made at the shrine, the cattle, and even the land presented by devotees are, they assert, their property free from any secular obligation, as none has ever in practice or in the intention of the donors been annexed to the gifts by which religious merit was sought and gained. They hold the property thus acquired, and have for centuries held it, as a sort of sacred guild, with hereditary succession to the several members. It is not held on any trust for the support or ceremonies or with any obligation annexed to it that can be enforced in a secular Court. The duty of providing a regular worship for the deity is of a purely moral kind, which they discharge merely to satisfy their consciences, one the nature and limits of which have never been settled otherwise than by their own will and judgment.

The District Judge rejected the suit, on the ground that the plaintiffs, other than Manohar Ganesh Tambekar, had not the position which they claimed of joint trustees of the temple. They were not, he found, even directly interested in the institution. The plaintiff Manohar was interested, but then he sued merely out of spite at a decree having been passed against him in favour of the *shevaks*, the present defendants.

It has not been contended before us that, if the property in question is a trust at all, the plaintiffs have not such an interest in its right administration as enables them to fill the part of relators. **[259]** As to Manohar, the District Judge recognized his capacity, and the motives that actuated him do not affect his capacity. The other plaintiffs are priests who take part in the ceremonies in so far that they take charge of votaries, conduct them through the solemnities, and receive certain offerings with which to a larger or smaller amount the pilgrims must require their services. Taking part in the worship they are directly interested in its due performance and its maintenance. They may not be trustees, but they clearly are amongst those who in practice benefit by the execution of the trust, supposing there is a trust. They have thus an undeniable *locus standi* as relators, and the suit, if maintainable, may proceed at their instance.

There is no difficulty in conceiving the existence of a society having property and receiving gifts from its own members or from strangers, which it then disposes of simply for its own benefit or at its own discretion. The guilds and companies in manufacturing and trading cities held and still hold estates without the attendant obligations of a charitable trust. The property is their own, distributable amongst the members or at the pleasure of the governing body of the society, not held for the benefit of any class outside the society or for the promotion of any purpose of recognized public utility. The latter characteristic is essential to a public charity, but in its absence there may be a corporation existing by royal grant, prescription or legal allowance, holding property for other than charitable purposes. Whether the association exists for charitable purposes or not, it cannot, according to the English law, without incorporation in some shape, become vested with property as a mere fluctuating and undefined aggregate—*Goodman* v. *Mayor of Saltash* (1). If its purposes are such as are contemplated by s. 26 of the Indian Joint Stock Companies' Act, VI of 1882, the society may get itself constituted accordingly under the Act. Otherwise, though the individual members may have certain rights and privileges as members of a class or answering to a certain designation, these advantages must be realized, as against the

(1) L. R. 7 Ap. Cas. 633 (648).

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world at large, through the proprietary or *quasi*-proprietary right of some other person or corporation.

[260] The defendants in the present case put themselves forward, not merely as entitled to the enjoyment of particular benefits to be taken by them individually as members of a class, but as a body of proprietors holding a small estate in the shape of immoveable property, but a much larger one in the form of the accumulated offerings of articles of value laid at the feet of the idol and of the revenue arising from this source. The questions are whether they can and do take this property and this revenue absolutely as their own without any trust or annexed duty, and whether, if they enjoy by a kind of agency or representation of the idol conceived as a personality, they fulfil the duty they owe to this ideal person in merely revelling on the growing revenues, or are bound to widen the range of the deity's beneficence in proportion to the expansion of his mundane means.

As to the jurisdiction of the Civil Courts in matters of this kind, it is too late now to raise any contention. Under the native system of government though it was looked on as a heinous offence to appropriate to secular purposes the estate that had once been dedicated to pious uses, (W. & B. H. L., 202, 817), yet the State in its secular executive and judicial capacity habitually intervened to prevent fraud and waste in dealing with religious endowments. It was quite in accordance with the legal consciousness of the people that the Bombay Reg. XVII of 1827 gave to the Collector a visitatorial power enabling him to enforce an honest and proper administration of religious endowments. [The connection of the Government in its executive capacity with Hindu and Mahomedan foundations was brought to an end for Bombay by Bombay Act VII of 1863 and for Bengal and Madras by Act XX of 1863.] But the existence of sacred property and of the rights and obligations connected with it as objects of the jurisdiction of the Civil Courts is recognized by the laws just referred to. In the southern part of the Bombay Presidency, dedicated estates are expressly made inalienable by Bombay Act II of 1863, s. 8. Questions arising under these laws between individuals with reference to proprietary and pecuniary rights and as to alleged misappropriations and defalcations must necessarily be dealt with by **[261]** the Civil Courts, which only can bring the requisite sanctions to bear on the enforcement of an honest discharge of their duty by the holders of dedicated estates. The mere incidental cognizance of a religious or caste question, the recognition of the settlement of such a question by the competent authority, is involved in the exercise of this jurisdiction, and does not stand in the way of it —*Krishnasamy Chetti* v. *Virasami Chetti* (1). It is recognized by the indigenous customary law that an affair, in which the castes could not or would not give relief, is a proper subject of adjudication by the ordinary Civil Courts (2). The cases in which Hindu foundations and charitable (including religious) trusts have been enforced and the persons connected with them made accountable by the Civil Courts are too numerous to mention. Reference may be made to *Maharanee Shibessouree Debia* v. *Mothooranath Acharjo*(3); *Mohunt Burm Suroop Dass* v. *Khashee Jha*(4); *Juggodumba Dossee* v. *Puddomoney Dossee* (5); *Dhurrum Singh* v. *Kissen Singh* (6). If, then, there is, in the present case, a public purpose, for the

(1) 10 M. 133 (144); W. &. B. H.L. 599 *n*.
(2) West and Bühler, H. L. 1007 *n* (*c*); Steele L. C. 185 (186 and 267).
(3) 13 M.I.A. 270.
(4) 20 W. R. C. R. 471.
(5) 15 B.L.R. 318.
(6) 7 C. 767.

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fulfilment of which, a class of persons, for whose benefit, in a way admitted by the State as deserving protection, the property of the Dakor temple is held and its revenues are received by the defendants, the defendants become by these mere circumstances amenable to the jurisdiction we are now called on to exercise. The religion of the Hindu population being jurally allowed, the duties and services connected with it must be deemed objects of public concern, and at least as to their physical and secular elements, enforceable like other obligations.

The evidence recorded in the case, including that of many donors to the idol Shri Ranchhod Raiji, shows that having discharged a religious duty or gained religious merit by a gift to the deity, the votary is but little interested in what afterwards becomes of the offering (1). Still he must needs be and is concerned in the maintenance of a decent and orderly worship. He [262] is interested, too, in the honour and respect of the deity he revers. He does not intend to pander to unrestricted licentiousness or mere ignorant sensuality which must bring his deity and its worships into contempt. He desires a regular and continuous or at least a periodical round of sacred ceremonies, which might fail if the offerings of past years were all squandered, while those of any given year fell short. The *shevaks* seem to have received the offerings, both of immoveables and of moveables, with a consciousness, though but a hazy consciousness, that they were bound, out of the funds thus coming to them, to provide for the worship of the idol and the convenience of the pilgrims who resort to the temple. In the document No. 4, dated in 1772, the *shevaks* admit their responsibility to the then manager of the villages with which the temple had been endowed. The document No. 4 is a copy agreeing with an earlier copy of the original which has been taken from our records for comparison. It was filed nearly half a century ago in the course of execution proceedings against the temple property by the judgment-creditor; and though the original has disappeared, there seem to be reasonable, though not perhaps conclusive, grounds in favour of the genuineness of the copy filed in 1831, and then admitted as evidence. As the admission of the copy was not, so far as appears, resisted, we may properly act on it as evidence. The *shevaks* of to-day, who claim by a continuity of rights as the representatives of the *shevaks* for several centuries back, must submit to a like succession of responsibility, and thus the document, Ex. 4, is evidence against them, as though it were of but recent date.

The document (Ex. 210), dated in 1793, shows the native governor of the fort of Pavghar exercising visitatorial power to prevent waste of the temple property by either the Tambekar managing the dedicated villages, or the *shevaks* holding the accumulated offerings at the shrine. In 1818, Exs. 243, 256 are orders of the English Collector exercising an authority like that formerly exercised by the native governor. The *shevaks* are allowed to take the offerings in cash; but articles of value, such as clothes and jewels, are to be consigned to the charge of the *bhandari* or store-keeper. Again in 1829 (Ex. 322) and in [263] 1831 (Ex. 244) the Collector intervened to preserve order and to prevent mismanagement, with a threat that neglect would be followed by an adoption of the measures authorized by Reg. XVII of 1827. Coming down to a more recent time, we find the *shevaks* in 1861 (Ex. 264) petitioning the Government of Bombay for a remission of income-tax, on the ground that the revenue derived from

(1) West and Bühler H. L. 197, 411; Vya. May. Ch. IV, s. 1, p. 8.

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the offerings was primarily the property of the idol. An idol, the *shevaks* contend, is not subject to taxation. The necessities of the ceremonial worship had first to be provided for, and only the surplus was distributed amongst the *shevaks*. Again, in 1878, the pleader of the *shevaks*, instructed to answer for them in the previous suit, stated distinctly that the claims of the idol,—that is, debts incurred on behalf of the idol,—must be satisfied before claims of the *shevaks*. Clothes and valuables presented by votaries were, he said, presented for the idol; but small coins were distributed amongst the *shevaks*, about one hundred and fifty in number. Some months afterwards, it is true, the *shevaks* sought to withdraw these admissions and set up an absolute proprietary right to all that had been offered or dedicated to the idol, but the motive of this contradiction is evident, while the prior deliberate statement derives force from its conformity with the previous history of the institution and with the religious system of the Hindus.

The Hindu law, like the Roman law and those derived from it, recognizes, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations (1). A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it (2), and the rule will give effect to the bounty, or at least protect it so far, at any rate, as it is consistent with his own *dharma* or conceptions of morality (3). A trust is not required for this purpose: the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English law (4). In early [264] times a gift placed, as it was expressed, "on the altar of God" sufficed to convey to the church the lands thus dedicated (5). Under the Roman law of pre-Christian ages such dedications were allowed only to specified national deities (6). After Christianity had become the religion of the empire, dedications to particular churches or for the foundation of churches and of religious and charitable institutions were much encouraged (7). The officials of the church were empowered specially to watch over the administration of the funds and estates thus dedicated to pious uses (8), but the immediate beneficiary was conceived as a personified realization of the church hospital or fund for ransoming prisoners from captivity (8). Such a practical realism is not confined to the sphere of law; it is made use of even by merchants in their accounts, and by furnishing an ideal centre for an institution to which the necessary human attributes are ascribed—*Dhadbhale* v. *Gurav* (9)—it makes the application of the ordinary rules of law easy as in the case of an infant or a lunatic(10), Property dedicated to a pious purpose is, by the Hindu as by the Roman law, placed *extra commercium* (11), with similar practical savings as to sales of superfluous articles for the payment of debts and plainly

(1) West and Buhler, H. L., 201, 185, 553, 555.
(2) West and Buhler, H. L., 99, 197. 216.
(3) West and Buhler, H L., 33; Manu VIII, 41; Coleb. Dig. B. III, Ch. II, T. 28.
(4) Spence Eq. Juris. 440; Sav. Syst. s. 88.
(5) See Elton's Ten. of Kent, 17, 18.
(6) West & Buhler H. L. 185 (b); Ulpian Fr. XXII, s. 6. They were thus placed *extra commercium*. Sav. Syst. sec. 88 (cc).
(7) Sav. Syst. s. 88; comp. West & Buhler, 197.
(8) Sav. Syst. s. 88. (9) 6 B. 122.
(10) Sav. Syst. s. 90, comp. *Kinlock* v. *Secretary of State for India in Council*, L. R. 15 Ch. Div. 8.
(11) West & Buhler H.L. 185, 197.

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necessary purposes (1). Mr. Macpherson admitted for the defendants in this case that they could not sell the lands bestowed on the idol Shri Ranchhod Raiji. This restriction is like the one by which the Emperor forbade the alienation of dedicated lands under any circumstances (2). It is consistent with the grants having been made to the juridical person symbolized or personified in the idol at Dakor. It is not consistent with this juridical person's being conceived as a mere slave or property of the *shevaks* whose very [265] title implies not ownership, but service of the god. It is indeed a strange, if not wilful, confusion of thought by which the defendants set up the Shri Ranchhod Raiji as a deity for the purpose of inviting gifts and vouchsafing blessings, but, as a mere block of stone, their property for the purpose of their appropriating every gift laid at its feet. But if there is a juridical person, the ideal embodiment of a pious or benevolent idea as the centre of the foundation, this artificial subject of rights is as capable of taking offerings of cash and jewels as of land. Those who take physical possession of the one as of the other kind of property incur thereby a responsibility for its due application to the purposes of the foundation—compare *Griffin* v. *Griffin* (3); *Mulhallen* v. *Marum* (4); *Aberdeen Town Council* v. *Aberdeen University* (5). They are answerable as trustees even though they have not consciously accepted a trust, and a remedy may be sought against them for mal-administration (6) by a suit open to any one interested, as under the Roman system in a like case by means of a *popularis actio*.

The evidence of the witnesses in the case, even of the defendants who were examined, supports the view of the Dakor temple and of the *shevaks'* connection with it which has just been stated. The gift (Ex. 238), is of land to the deity for daily food. The grant (Ex. 237) for feeding sacred cows is of a like kind. It is generally admitted that rich offerings, such as the silver throne presented by the Gaekwar, have been stored in the temple treasury. Defendant Kalidas (Ex. 133) says that for seven hundred years the *shevaks* have appropriated what could no longer be applied to the use of the deity. Their proprietorship, he says, subsists only through Shri Ranchhod Raiji. The defendant Bechar Madhavram (Ex. 137) insists strongly on the *shevaks'* right even to sell the temple lands, but he gives no instance of it; and Lakshman (Ex. 139) admits that offerings are dedicated to the deity, though still he says the *shevaks* take them as owners. "While the idol is present," this witness says, "the shrine is his. In his absence it is ours." This is another instance of the confusion of thought or want of power of abstraction, which, more [266] perhaps than any positively dishonest intention, has led the *shevaks* to commit themselves to a false and untenable position. The witness Shivlal (Ex. 157) says, the *shevaks* take all the offerings, but still "as representatives of the deity." Jamnadas (Ex. 197), a bountiful donor to the temple, says, the offerings are made to the god, though the *shevaks* divide them at their discretion. This is what the *shevaks* would naturally do, even as managers, unless called to account by some superior authority. It by no means necessitates the conclusion that they are and have always been owners of the idol as a juridical person—*Juggodumba Dossee*

(1) See Cod. Lib. I, Tit. 2 Fr. 21; West & Buhler, H.L., 555, 557. See also *Rupa Jagset* v. *Krishnaji Govind*, 9 B. 169.
(2) Vyav. May. Chap. IV, s. VII. p. 23; Nov. 120, cap. 10.
(3) 1 Sch. & Lef. 352. (4) 3 Dr. & War. 317.
(5) L. R. 2 Ap. Cas. 544. (6) Comp. Ind. Trusts Act II of 1882, ss. 88, 95.

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Puddomoney Dossee (1). They are a numerous body, about one hundred and fifty in number, succeeding to their offices by hereditary descent. It is admitted that they are entitled to a fair provision for their needs and to maintain the service of the temple. For a period extending over several centuries the revenues of the temple seem to have but slightly, if at all, exceeded the outlay required to maintain its services, but recently these revenues have very largely increased. The law which protects the foundation against external violence guards it also internally against mal-administration, and regulates, conformably to the central principle of the institution, the use of its augmented funds. It is only as subject to this control in the general interest of the community that the State through the law Courts recognizes a merely artificial person (2). It guards property and rights as devoted, and thus belonging, so to speak, to a particular allowed purpose only on a condition of varying the application when either the purpose has become impracticable, useless or pernicious, or the funds have augmented in an extraordinary measure. This principle is recognized in the law of England as it was in the Roman law, whence indeed it was derived by the modern codes of Europe. It is equally consistent with the Hindu law, which, as we have seen, undoubtely recognizes artificial juridical persons (3), such as the institution at Dakor, and could not, any more than any other law, support a foundation merely as a means of squandering in waste or profligacy the funds dedicated by the devout to pious uses.

[267] For the reasons we have given, we must reverse the decree of the District Court, and order that the costs of the suit and appeal be borne by the defendants. The District Judge will take steps, either by appointing a receiver, or otherwise, in his discretion, for guarding the property of the temple without disturbance of its services. He will take an account of the property and of the receipts and disbursements of the temple, such latter account being carried back to the year 1872, and beginning with such property as can be ascertained to have been then in existence. He will make the requisite orders for recovering property misappropriated and sums due to the foundation as well from others as from the *shevaks* or any of them. He will draw up a scheme for the future management of the temple and its funds, giving due consideration to the established practice of the institution and to the position of the *shevaks* and of other persons connected with it. Lastly, should there appear to be a surplus of revenue that may reasonably be counted on as durable, he will frame a scheme for the disposal of such surplus or a part thereof consistently with the general purpose of the foundation and complementary to the arrangements made under this Court's orders in *Manohar* v. *Keshavram* (4) on the appeal in the suit brought by the *shevaks* against Ganesh Manohar as defendant.

Decree reversed and case remanded.

(1) 15 B.L.R. 318. (2) See Sav. Syst., s. 89.
(3) See *Rupa Jagset* v. *Krishnaji Govind*, 9 B. 169.
(4) **12 B. 267-N = 12 Ind. Jur. 396 N = Unrep. P.J.B.H.C. (1878-1880) 229.**

Manohar v. *Keshavram*.—This suit was at first filed in the Court of the First Class Subordinate Judge at Ahmedabad by the plaintiff Manohar Ganesh Tambekar alone without the consent of the Advocate General. The suit was dismissed in appeal No. 11 of 1878 (1), for the reason stated in the following judgment of Mr. Justice West :—

" It appears that the suit, in which the injunction in question was granted, was clearly one by Manohar, the plaintiff, as a person having an interest in an alleged trust. He came forward, not in the assertion of any right of private property, which

(1) Printed judgments (1878) 252.

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he averred to have been infringed by the defendants, but to enforce the performance by them of duties connected with the shrine of Ranchhod Raiji, the worship at that shrine, and the revenues arising from offerings made by worshippers at it. This is the kind of case contemplated by s. 539 of the Code of Civil Procedure. As a dissenting chapel in England may be the subject of an information by the Attorney-General as a charitable institution (*Attorney-General* v. *Fowler* (1), so we think that a trust for a Hindu idol and temple is to be [268] regarded in India as one 'created for public charitable purposes.' If that is so, a suit relating to the temple of Ranchhod Raiji was not competent to Manohar alone or without the consent, in writing, of the Advocate-General. Moreover, it could not be instituted in a Court inferior to the District Court. The Court of the Subordinate Judge no longer has jurisdiction in such cases.

"For these reasons, we must refuse to restore the injunction set aside by the Subordinate Judge. His predecessor seems to have had no authority to make it." (Printed Judgments for 1878, p. 252.)

[R., 6 B. 42 (50) ; 12 B. 267 ; 37 C. 123=10 C.L.J. 355=14 C.W.N. 18=3 Ind. Cas. 642 ; 2 C.L.J. 460.—ED.]

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Before Mr. Justice West and Mr. Justice Birdwood.

ZIULNISSA LADLI BEGAM SAHEB (*Original Defendant*), *Appellant v.* MOTIDEV RATANDEV (*Original Plaintiff*), *Respondent.** [20th June, 1887.]

Limitation Act (XV of 1877) s. 19—Oral evidence of acknowledgment—Advisability—Acknowledgments made before the coming into force of Act XV of 1877—Evidence.

Under s. 19 of the Limitation Act, XV of 1877, oral evidence of the contents of an acknowledgment cannot be received, nor is there any saving of acknowledgments received or given back before the Act came into operation.

SECOND appeal from the decree of S. Hammick, District Judge of Surat, confirming the decree of Khan Bahadur B. E. Modi, First Class Subordinate Judge of Surat, in suit No. 201 of 1883.

The plaintiff sued to recover the sum of Rs. 775, with interest, being the balance of an account for moneys lent and advanced to the defendants Nos. 1 and 2 through their agent, defendant No. 3.

The original loan was made in 1876. At the end of every year the account was adjusted, a balance was struck, and a new receipt or acknowledgment was passed by the defendant No. 3 as agent for defendants Nos. 1 and 2. The last of such acknowledgments was dated 3rd November, 1880. Within three years from this date the present suit was filed in 1883.

The plaintiff produced the last acknowledgment only in support of his claim. The previous ones, he alleged, had been [269] returned to defendant No. 3, and were not forthcoming. He, therefore, adduced oral evidence to prove the intermediate acknowledgments.

The defendants contended that the suit was barred by limitation.

Both the lower Courts overruled this contention, and passed a decree for the amount claimed against defendants Nos. 1 and 2.

Against this decree a second appeal was preferred to the High Court.

Manekshah Jehangirshah for the appellant.—Section 19 of the Limitation Act (XV of 1877), expressly provides that oral evidence shall not be received of the contents of an acknowledgment, if it is lost or destroyed. This provision is a repetition of that in s. 20 of Act IX of 1871. In the

* Second Appeal No. 24 of 1885.

(1) 15 Ves. 85.