

what probably happened in this case, and it must be observed that in the present case no question of goodwill or trade secrets arises. It seems to me that all the defendant took with him when he went into the Protectorate were, as described by Lord Shaw of Dunfermline ([1916] 1 A.C. at 714; [1916—17] All E.R. Rep. at 313) — “a man’s aptitudes, his skill, his dexterity, his manual or mental ability — all those things which in sound philosophical language are not objective, but subjective. . . they are not his master’s property; they are his own property; they are himself.” For these reasons I have come to the conclusion that the restraints sought to be imposed on this defendant were unreasonable and bad in law and therefore void. I therefore dismiss the plaintiffs’ claim and give judgment for the defendant with costs.

Suit dismissed.

LANGLEY v. YEKINNY RENNER, WILLIAMS, TYJAN RENNER and TIRU RENNER

Full Court (McDonnell, Ag. C.J., Sawrey-Cookson and Butler-Lloyd, JJ.): December 1st, 1924

- [1] Civil Procedure — appeals — death of appellant — does not cancel final leave but invalidates bond for costs — appellant’s personal representative can continue appeal and respondent may request execution of new bond: A personal representative may continue proceedings begun by the deceased, but although the death of an appellant does not cancel final leave to appeal already granted it invalidates his bond for the costs of the appeal and the respondent may move the court to make the execution of a new bond a condition of leave to the personal representative to continue the proceedings (page 102, lines 1—7).
- [2] Civil Procedure — costs — security for costs — bond for costs on appeal nullified by death of appellant — respondent may request execution of new bond as condition of leave to appellant’s personal representative to continue appeal: See [1] above.
- [3] Ecclesiastical Law — conduct of religious services — irregularities — celebrant not priest — court may grant injunction to prevent celebration of services by person not a priest: When a religious trust imposes a duty upon the trustees to permit only priests to conduct religious services in their mosque, the court may grant an injunction to prevent the celebration of services by a person who is not a priest, despite earlier minor breaches of trust by the trustees (page 103, lines 24—28; page 103, line 34— page 104, line 21; page 106, lines 15—18).

- 5 [4] Ecclesiastical Law — discipline — enforcement — ecclesiastical authorities may exclude persons from religious services on grounds of unacceptable conduct: Ecclesiastical authorities are entitled to require certain standards in matters of faith and conduct before allowing persons to participate in religious services and the trustees of a mosque may therefore exclude members of the congregation on the grounds of their unacceptable activities, such as pagan worship, indecorous dancing and drinking alcohol, even though on the face of the trust deed the mosque has been established for the use of all Muslims (page 104, lines 27—38; page 105, line 8—page 106, line 4).
- 10 [5] Succession — executors and administrators — right to maintain proceedings — personal representative may continue proceedings begun by deceased: See [1] above.
- 15 [6] Succession — executors and administrators — right to maintain proceedings — proceedings begun by last surviving trustee may be continued by personal representative — personal representative takes his place until new trustees appointed: On the death of a last surviving trustee his personal representative takes his place and may continue proceedings begun by him until new trustees are appointed (page 101, lines 38—41).
- 20 [7] Trusts — trustees — death of trustee — death of last surviving trustee — personal representative takes his place until new trustees appointed — may continue proceedings begun by him: See [6] above.

The appellant brought an action in the Supreme Court seeking an injunction to prevent the respondents from taking part in religious services in the Fourah Bay Mosque.

25 The appellant was a trustee of the Fourah Bay Mosque. The trust deed gave the trustees the right to appoint priests to the mosque and provided that the mosque should be used by “professors and adherents” of the Muslim faith and that services should be conducted only by duly appointed priests. Although it also provided that the number of trustees should never fall below
30 nine the machinery of the trust had fallen into disuse and the appellant was the sole surviving trustee.

35 The respondents were members of the Muslim faith but also belonged to the Ogugu Society whose members were suspected of pagan worship, drinking alcohol and indulging in indecorous dancing. The priest of the mosque excluded the respondents from religious services on the grounds of their membership of the society, whereupon one of them, a layman, conducted several religious services in the mosque in the role of priest.

40 The appellant then brought the present proceedings seeking an injunction to prevent the respondents from taking part in religious

services in the mosque. The Supreme Court (Purcell, C.J.) dismissed the action on the grounds that — (a) the failure of the appellant to appoint new trustees was a breach of trust which disentitled him to equitable relief; and (b) the activities of the members of the Ogugu Society had not been proved to be such as would justify their exclusion from religious services. 5

The appellant obtained leave to appeal and executed a bond for the costs of the appeal, but died before the appeal was heard. The respondent raised a preliminary objection that the appeal was not properly before the court since the trusteeship of the appellant terminated on his death, which had also rendered the bond for costs null and void. 10

The appellant's legal personal representative was allowed to continue the appeal contending that the respondents had infringed the right of the trustees to appoint priests to the mosque and that an injunction should therefore be granted despite the failure of the trustees to maintain their numbers. 15

In reply the respondents contended that as Muslims they were entitled, by the terms of the trust deed, to take part in religious services in the mosque and that the appellant committed a breach of trust by allowing their exclusion. 20

The appeal was allowed.

Cases referred to:

- (1) *Banister v. Thompson*, [1908] P. 362; (1908), 24 T.L.R. 841, applied. 25
- (2) *In re Routledge's Trusts*, [1909] 1 Ch. 280; (1909), 99 L.T. 919.

C.E. Wright for the appellant;
Beoku-Betts for the respondents.

McDONNELL, Ag. C.J.: 30

A preliminary objection was raised in this case to the effect that the appellant having died since final leave to appeal was given this appeal was not properly before the court, the trusteeship of the appellant having terminated on his death and the bond for the costs of the appeal having become null and void through the death of the appellant. 35

As to the first point I can find no authority distinguishing in this regard charitable trusts and, in consequence, I feel bound by *In re Routledge's Trusts* (2), which is authority for saying that the legal personal representative of a last surviving trustee steps into his shoes until new trustees are appointed. 40

On the second point, I hold that the failure of the bond does not cancel the final leave to appeal. The bond for costs is required merely by a rule of practice to secure respondents against frivolous and vexatious appeals, and it was open to the respondents on the
 5 death of the appellant to move the court to make the execution of a new bond a condition of leave to the appellant's personal representative to continue the appeal.

For these reasons the preliminary objection must fail.

The case for the appellant is that the rights which he enjoyed
 10 under the trust deed as sole surviving trustee of appointing priests in the Fourah Bay Mosque have been infringed by the acts of the respondents in respect of the performance of acts of religious worship in and about the mosque connected with two burials and one marriage. If those rights have been infringed it is urged that an
 15 injunction must be granted as of course to prevent a recurrence of the violation.

It is said by the respondents, and the learned Chief Justice in the court below adopted the argument, that the failure of the appellant to appoint new trustees or to carry out the trust by
 20 summoning a meeting for the election of the annual assembly is a breach of trust which disentitles the appellant to the equitable relief which he requires, because he has not come into court with clean hands.

Let us at this point look into the deed a little more closely and
 25 see what exactly is what the learned Chief Justice has aptly called "the machinery of the trust."

If we look at p.7 of the deed we shall find that the trustees have power to fill up gaps in their ranks, always keeping them up to not less than nine, but new trustees must be approved by an annual
 30 assembly, such approval being testified under the hand of the chairman.

Now the annual assembly, by p.4 of the instrument, are 12 nominees of the trustees who hold office for 12 months and can be re-appointed. Vacancies in the annual assembly are to be filled
 35 by the trustees or, failing them, by the remaining members of the assembly or, failing them, by the priest.

The trustees have imposed upon them the duty of appointing the priests who can be removed for immorality or neglect of duty by what may be called a joint session of the trustees and the
 40 annual assembly. The whole of these elaborate provisions have

been allowed to fall into disuse, the ranks of the trustees have been depleted till the last survivor dies; there is no evidence of the persistence of any annual assembly, although one witness, Abu Bokari Savage, says: "Daddy Ghewa, Alpha Legally Savage and others appointed me a member of the committee of the mosque. This is about six years ago." Alpha Legally Savage, who was, I gather, this witness's father, was the priest at that time, but there is nothing to show that he or Daddy Ghewa were trustees, that "the committee" was the annual assembly, or that the appointment made six years ago was ever renewed at the close of any of the succeeding years.

It is said by the respondents' counsel that there is no evidence that the annual assembly had ceased to exist. All I can say is that, as I have already remarked, there is no evidence of its persistence. Counsel for the appellant urges that the failure of the last surviving trustee to appoint eight colleagues is not a breach of trust, and that the learned Chief Justice erred in ordering the plaintiff to carry out the trust by summoning a meeting for the election of an annual assembly. I am with counsel for the appellant on the last point: all that the surviving trustee could do was either himself, as such, to appoint an assembly or, in the first place, to fill the ranks of trustees till they were nine in number, and let them then proceed to appoint the assembly.

On the point as to whether his omission to fill the ranks was a breach of trust I need not decide, because I am satisfied that even if this negligence was a breach of trust it was not tainted by such illegality or fraud, such depravity in a legal as well as a moral sense as to disentitle the party concerned to equitable relief.

It seems to me clear that the surviving trustee was never asked to fill the ranks of his colleagues, because those who were opposed to him were certain that were he so requested he could nominate those who saw eye to eye with him and so would entrench himself more strongly than ever in opposition to them.

For the respondents it is urged that the trust deed vests the mosque for the use of *all* Muslims; the words in the deed are:

"[A]nd upon further trust from time to time and at all times hereafter to permit and suffer the said mosque or other place of religious worship with the appurtenances to be used occupied and enjoyed as and for a place of religious worship by such of the professors and adherents of the faith of the

5 religious sect called Mohametans as are now or may hereafter
be residing in Sierra Leone aforesaid and by other persons
attending religious service therein and for the purposes afore-
said to permit and suffer such person or persons only as are
hereinafter mentioned and called priest or priests to conduct
and perform all usual acts and ordinances of religious worship
therein (that is to say) such person or persons as may be the
said trustees for the time being from time to time be there-
unto appointed.”

10 Now we have it in evidence that the respondents are members
of the Ogugu Society and that, being refused the ministrations of
their religion, one of their number, in view of that refusal by the
priest, on several occasions performed religious exercises as priest
15 in the mosque. It is urged that the refusal of religious rites was a
breach of trust and that the appellant connived at such breach.
The respondents certainly flouted the authority of the priest in
the religious exercises conducted by a layman, and the appellant,
had he assented to this, would have been guilty of breach of that
20 part of the deed which directs that he should “permit and suffer
such person or persons only as are called priests to conduct and
perform all usual acts and exercises of religious worship.”

In addition to this, as I have said before, the respondents are
members of the Ogugu Society.

25 I cannot agree with the learned Chief Justice that the evidence
of Dr. Abayomi Cole taken with the rest of the evidence entirely
whitewashes, if I may use a popular expression, the members of
that society. The society is of pagan origin, originally associated
with ancestor worship and the sacrifice to such ancestors of fowls,
with certain secret meeting places to which outsiders are not
30 admitted. Its membership is not confined to Muslims, as one
would expect from its origin, and pagans and Christians alike are
included among its members. It indulges in dances, which it is
suggested are indecorous, and we have it in evidence that strong
palm wine, which is an alcoholic drink, is used for the refreshment
35 of its members.

I can well understand an orthodox Muslim deprecating member-
ship of such a society by Muslims of Yoruba descent, not many
generations removed from paganism. The temptation to drink; the
association with other members who are still pagans and who, *ex*
40 *hypothesi*, would not be averse to adding pagan worship, for

which the society originally arose, to the possibly harmless pastime of dancing; the secret meetings where such rites may be suspected of being carried on, are all factors which would arouse disapproval. Alpha Billa and Alpha Tijan, the Imam and the Nahib, in other words the two priests, of another important mosque which is situated in Foulah Town, say that they refuse the religious rites of Islam to members of the Ogugu. 5

The disciplinary powers to excommunicate or refuse the sacraments to members of the great Christian Churches have been evolved through centuries of canon law. In this connection, I wish to quote from a judgment of Sir Lewis Dibdin, the Dean of the Arches, in the case of *Banister v. Thompson* (1), where there was a refusal by an English clergyman of the sacrament of Communion to a person who had married his deceased wife's sister ([1908] P. at 379; 24 T.L.R. at 846): 10 15

“The exclusion of a member of the Christian Church from participation in the sacrament of the Lord's Supper was very early recognized as a necessary and potent weapon of ecclesiastical discipline. In the centuries which followed the apostolic age the penitential system developed by slow degrees into a settled organization. A member of the Church charged with sin, if he denied the charge, or if, while admitting it, he refused to submit himself to discipline, was arraigned before the bishop or the bishop's judicial delegate, and, if his guilt was established, was sentenced to excommunication — i.e., either (1.) loss of Church privileges (including that of Holy Communion) until he should make submission; or (2.), in rare cases, absolute expulsion from the Church of Christ. Exclusion from Holy Communion was part of a judicial sentence. But if the accused person admitted his wrong-doing, expressed sorrow, and asked to be admitted to the discipline of repentance, he was dealt with as a penitent.” 20 25 30

Can it, I ask, be reasonably said that the exclusion of a member of the Muslim faith from participation in the rites of Islam is not to be recognised as a necessary weapon of discipline? I would note here in passing that we have it in evidence that former members of the Ogugu who have dropped their membership are not denied religious ministrations in the Fourah Bay mosque. 35

A religious congregation is a voluntary association of persons worshipping according to the same belief under the ministration of 40

their priest, and I hold that the ecclesiastical authorities are entitled to demand a certain standard in matters of faith and conduct before they will allow persons to participate in the religious exercises which they perform.

5 Finally it has been said in this court that the appointment of Alhaji Saidu was a breach of trust as he was appointed by the sole surviving trustee alone. Of this we have no evidence, although his appointment in 1921 suggests the probability that there were not
10 nine trustees then surviving. On this I hold that the respondents, not having put this appointment in issue in the court below and having in their defence referred to him as "the duly appointed priest," are debarred from raising that point now.

For these reasons I hold that the judgment of the learned Chief Justice should be set aside.

15 I hold that this court should grant an injunction to restrain the respondents from either doing any of the acts set forth in the statement of claim or from inciting any other person or persons to do all or any of them.

20 The court will order the appointment of new trustees for the purpose of carrying out the provisions of the trust deed and in that behalf will give the necessary directions with liberty to apply, the respondents to pay the costs of claim and counterclaim both in this court and in the court below.

25 SAWREY-COOKSON, J. and BUTLER-LLOYD, J. concurred.
Order accordingly.

30 **SCHUMACHER AND STRAUMANN v. JEMAL AND GALLIZIA**

Full Court (McDonnell, Ag. C.J., Sawrey-Cookson and
Butler-Lloyd, JJ.): December 1st, 1924

35 [1] **Contract — misrepresentation — meaning of representation — simplex commendatio cannot amount to actionable misrepresentation: A *simplex commendatio*, that is a seller's praise of his goods in general terms cannot amount to an actionable representation (page 111, lines 1-3).**

40 [2] **Contract — misrepresentation — representations outside contract — in absence of fraud, oral representations of quality not embodied in written contract not binding — applies despite seller's knowledge of defects if**