1st December, 1924.

MOHAMMED LANGLEY alias GHEWA - *Appellant.*

v.

YEKINNY RENNER, AMADU WILLIAMS, TYJAN RENNER and TIRU RENNER - *Respondents.*

Replacement of trustee on death, by legal personal representative —Failure of security for costs of appeal by death of Appellant—Action for injunction—Omission by surviving trustee to appoint other trustees—" Depravity " in breach of trust.

The facts of this case are sufficiently set out in the judgment.

Appeal from a judgment of Purcell, C.J., in the Supreme Court of the Colony of Sierra Leone.

Wright for the Appellant.
Betts for the Respondents.

Betts for the Respondents raises a preliminary objection and cites:—

Daniel's Chancery Practice, 8th Edition, pp. 230, 241.
James *v.* Morgan (1909) 1 K.B., p. 254.
Halsbury, Laws of England, Vol. 28, p. 115, para. 251.
Halsbury, Vol. 17, p. 200, para. 444.
Attorney-General *v.* Birmingham Drainage Board, 17 Ch. D., p. 685.
Halsbury, Vol. 28, p. 154.
Halsbury, Vol. 4, p. 169, para. 285; p. 265.
Salusbury *v.* Denton, 2 K. & J., p. 529.
Halsbury, Vol. 15, p. 552.

Wright for Appellant on the preliminary objection cites:—

Halsbury, Vol. 28, pp. 115, 154.
Halsbury, Vol. 4, p. 265.

Betts in reply on the preliminary objection cites:—

Daniels Chancery Practice, 8th Edition, Vol. I., pp. 238, 242.

Wright for the Appellant cites:—

Imperial Gas Company *v.* Broadbent, 26 L.J., Ch. p. 271.

Shelfer *v.* City of London Electric Co., 64 L.J. Ch., p. 216.
Wood *v.* Sutcliffe, 2 Symonds N.S., 166, 169.
Halsbury, Vol. 17, pp. 208-209.
Martin *v.* Price, 1894, 1 Ch., p. 276.
Strachan Equity, 2nd Edition, p. 440.
Re Boswell, 58 L.J. Ch., p. 432.
Halsbury, Vol. 13, p. 72.
Re Higginbotham, 1892, 3 Ch., p. 135.
Lewin on Trusts, 9th Edition, p. 1166, Note B.
Re Hodgson, 9 Hare, p. 118.
Underhill on Trusts, p. 432.
Godefroi on Trusts, pp. 807-8.

Betts for Respondent cites:—

Colonial Securities Trust *v.* Massey, 1896, 1 Ch., p. 38.
Khoo Sit Hoe *v.* Lim Thean Tong, 1912, A.C., p. 323.
Halsbury, Vol. 17, p. 207.
Kerr on Fraud and Mistake, 5th Edition, p. 34.
Thompson's Compendium of Equity, 1899, p. 280.
Halsbury, Vol. 17, p. 247.
Llandudno U.D.C. *v.* Clowes, 1899, 2 Ch., p. 705.
Halsbury, Vol. 13, p. 72.
Strachan's Equity, 3rd Edition, p. 379.
Moore *v.* France, 20 L.J. Equity, N.S., p. 469.
Halsbury, Vol. 28, pp. 119, 259.
Halsbury, Vol. 28, p. 124.
Simpson *v.* Bathurst, 5 Ch., App., p. 193.
Halsbury, Vol. 4, p. 272.
Attorney-General *v.* Calvert, 26 L.J. Ch., p. 282.
Shrewsbury and Chester Railway *v.* Shrewsbury-Birmingham Railway, 20 L.J. Equity, at p. 581.
Halsbury, Vol. 28, p. 119, para. 260.
Strachan's Equity, 3rd Edition, p. 307, paras. 1 and 5.
Godefroi on Trusts, p. 790.
Dean *v.* Bennett, 40 L.J. Ch., p. 452, 1870.
Dawgars *v.* Rivaz, 29 L.J. Ch., p. 685.
Attorney-General *v.* Sherborne, 24 L.J. Ch., at p. 81.
Halsbury, Vol. 4, p. 265.
Godefroi on Trusts, p. 620.
Daniel's Chancery Practice, 8th Edition, p. 1060.
Halsbury, Vol. 28, p. 193, para. 390.
White Book, 1905, p. 966.

Gilbert *v.* Huddlestone, L.R., 28 Ch. D., p. 549.
White Book, p. 287.
White Book, p. 906.
Daniel's Chancery Practice, p. 1047.
Bland *v.* Footman, L.R., 39 Ch. D., at p. 685.

Wright in reply cites:—

Cooper *v.* Gordon, 8 Equity, p. 258.
Halsbury, Vol. 4, p. 265.
Ryan *v.* Mutual Tontine, 62 L.J. Ch., p. 252.

McDONNELL, Acting C.J.

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.

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, Routledge *v.* Saul, 1909, 1 Ch. D., p. 280, which is authority for saying that the legal personal representative of a last surviving trustee steps into his shoes until new trustees are appointed.

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 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 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 injunction must be granted as of course to prevent a recurrence of the violation.

It is said by 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 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 see what exactly is, what the learned Chief Justice has aptly called, " the machinery of the trust."

If we look at page 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 assembly, such approval being testified under the hand of the Chairman.

Now the annual assembly by page 4 of the instrument are twelve nominees of the trustees who hold office for twelve months and can be re-appointed.

Vacancies in the annual assembly are to be filled 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 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 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 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 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.

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MCDONNELL, ACTING C.J.

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:—

" and 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 religious sect called Mahometans as are now " or may hereafter be residing in Sierra Leone aforesaid " and by other persons attending religious service therein " and for the purposes aforesaid 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 thereunto appointed."

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 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 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 exer- " cises of religious worship."

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

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 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 of its members.

I can well understand an orthodox Muslim deprecating membership 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 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.

The disciplinary powers to excommunicate or refuse the sacraments to members of the great Christian Churches have been evolved through centuries of Canon Law and, in this connection, I wish to quote from a judgment of Sir Lewis Dibdin, the Dean of the Arches, in the case of Banister and wife *v.* Thompson (1908 Probate, at p. 379), 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:—

> " The exclusion of a member of the Christian Church " from participation in the sacrament of the Lord's Supper " was very early recognised as a necessary and potent weapon " of ecclesiastical discipline. In the centuries which fol- " lowed the apostolic age the penitential system developed by " slow degrees into a settled organisation. A member of the " Church charged with sin, if he denied the charge, or if, " while admitting it, he refused to submit himself to dis- " cipline, was arraigned before the bishop or the bishop's " judicial delegate, and, if his guilt was established, was " sentenced to excommuncation, *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."

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.

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

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 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.

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.

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 counter-claim both in this Court and in the Court below.

SAWREY-COOKSON, J.

I agree.

BUTLER LLOYD, J.

I agree.