

rent was paid to him and not to the plaintiff. It was, therefore, an error to rely on such payments for fixing, the rate of rent, which, under the circumstances of the case should be the same as was awarded by the decree No. 37. Had there been no decree, the proper decision would have been to award the rent according to what had been paid by the defendant before the Collector attached the land, or, if none appeared to have been paid, according to the custom of the country (a). The only issue remaining undisposed of is in regard to the interest claimed. The Judge has not recorded his finding on it, and, if his finding is desirable, the case must be remanded to him, but the Respondent's *vakil* has intimated that, taking into consideration the expenses and delay attendant on a remand, he will not press his claim for interest, and we are not aware of any law authorizing the award of interest in the manner claimed. We therefore reverse the decree of the District Judge, and amend the decree of the Munsif by deducting the amount awarded by him on account of interest. All costs on the respondent.

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Raghnath  
Abaji Rastya.

GIBBS, J.—Concurred.

*Munsif's decree amended.*

(a) This was the ruling in Special Appeal No. 420 of 1866, between this plaintiff and another tenant disposed of by the same Bench on 26th January 1869.

*Special Appeal No. 480 of 1868.*

Murar Daya <i>et al.</i>	...	...	<i>Appellants.</i>
Nagria Ganeshia.	...	...	<i>Respondent.</i>

Jan. 26

*Fees upon Marriage—Caste Question—Reg. II of 1827 sec. 21*

The plaintiffs sued to recover from the defendant certain fees alleged to be due to them, as *Mektars* of the caste, on the marriage of the daughter of the defendant.

The defendant denied that the plaintiffs were his *Mektars*.

*Held*, that the question between the parties was a caste question with which the Courts were precluded from interfering by Reg. II. of 1827 sec. 21.

This was a Special Appeal from the decision of A. I. Spens, Senior Assistant Judge at Kheda, in Appeal suit

1869 No 199 of 1866, reversing the decree of the Munsif of  
 Murar Daya Mahudha.  
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The plaintiffs sued to recover from the defendant the sum of Rs. 1-8 alleging that they (the plaintiffs) were the *mehtaria agevan patils* of Dheds residing in Mahudha and in 28 other villages of the Mahudha Taluka, and as such had a right to receive Rs. 1-8-0 from the father of each girl that was married; that, from the time of their ancestors up to the present day, they and their ancestors enjoyed this right, but that the defendant refused to pay the sum of Rs. 1-8-0 on account of the marriage of his daughter. The plaintiffs also claimed to recover as damages Rs. 14-7-0.

The defendant answered that the plaintiffs were not his Mehtars, and that he never engaged them as such, and that therefore, their claim would not lie against him.

The Munsif awarded the claim, but the Senior Assistant Judge reversed his decree. The following is his judgment :—

“ Is the cause of action triable by the Court ?

“ On this issue I decide for the appellants.

“ This is a purely caste question and one dependant upon the will and pleasure of its members. The question has been decided more than once as to other supposed caste *haks* see *Bapoo valad Mahomet v. Oomurkhan Daood khan*, S. A. No. 2444 (a), and *Kazee Shaik Mohinoodeen v. Usmaljee Momudjee*, S. A. No. 3574 (b); and in direct reference to this suit, see the decision passed by the Judges of the High Court at Calcutta *Nobin Chunder Dutt v. Mudhub Dhunder* (c). I reverse the Munsif's decree. All costs on Respondent.

The case was heard on the 14th December 1868 before Newton and Tucker, JJ.

*Nanabhai Haridas* for the appellants. The question is whether the right is a civil right, and, as such, can be enforced in a Civil Court. Section 21 of Reg. II. of 1827 prohibits interference with caste questions, but this is not a question.

(a) Morris' Selected Decisions, Part II. 147.

(b) Morris Rep. 4°. (c) 6 Cal. W. Rep. Civ. R. 225,

of caste. He cited, *Bliva Sawunt v. Vitta Ram Poojara*, S. A. No. 3675 (d) ; *Tirth Blut v. Shesapa Sonar* (e) ; and *Nobin Chunder Dutt v. Madhub Chunder* (f).

*Dhirajlal Mathuradas* for the Respondent. The suit is to recover damages, but there is no injury to caste or character as required by section 21 of Reg. II. of 1827. Had the Plaintiffs claimed to recover the tax from all the villagers they would have perhaps a Civil right founded on usage, but here they claim the tax from the caste-men by reason of their (plaintiffs) being, they say, the head men of the caste. The question whether they are the head men is a caste question. He cited S. A. No. 3574 ; S. A. No. 2444 ; S. A. No. 246 of 1867 ; and S. A. No. 131 of 1868.

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*Cur. adv. vult.*

PER CURIAM:—We are of opinion that the Lower Appellate Court has correctly determined that the question at issue between the parties to this suit is a caste question, and, consequently, one excluded from the cognizance of the Civil Courts by Reg. II. of 1827, sec. 21. The plaintiffs and defendant belong to the Dhed community, and the plaintiffs have sued the defendant to recover from him certain fees which they claim as due to them as Mehtars or chief men of the Dhed caste on the occasion of any marriage ceremony which takes place in the family of any member of that caste. The defendant refuses to recognize the plaintiffs as the chief men (Mehtars) of his caste, and denies that he is under any obligation to pay them fees. We concur in the view expressed by a Division Bench of this Court in Special Appeal No. 39 of 1862, *Ambu valad Appaji v. Khanu Sakharam*\* decided on 23rd

(d) 4 Morris Rep. 118.

(e) 7 Harrington 236.

(f) 5 Cal. W. Rep. Civ. R. 225.

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\*Note.—This was a suit to establish the right of the plaintiff to certain *manpans*. The Munsif rejected the claim, and the Acting Assistant Judge confirmed the decree on the ground that the offering of *manpan* was a religious act and that the claim to it was not enforceable.

The plaintiff appealed, specially relying upon the decision in *Gorimod row bin Amandrow v. Dewjee bin Esjee* (S. A. 3069)†, and *Bulwant Baboorow v. Baboo Naroojee* (S. A. 3242) (‡), and *Bliva Sawunt v. Vitta Ram* (S. A. 3675) (\*).

(†) 1 Morris Rep. 160.

(‡) 3 Ibid 283.

(\*) 4 Ibid 118.

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December 1864, in a similar dispute.\* We, therefore, affirm the decree of the Senior Assistant Judge and direct that the special appellant pay the costs of this special appeal.

*Decree confirmed.*

*Special Appeal No. 470 of 1868.*

Jan. 29.

SHIVRAM VITHAL.....Appellant.  
 BHAGIRTHIBAI.....Respondent.

*Suing without written authority—Jurisdiction—Ratification—  
 Civ. Proc. Code. sec. 19.*

A widow, without any written authority, sued on behalf of her son, who was absent on military service beyond the jurisdiction of the Court. The defendants did not object to her want of authority in the Court of first instance, but did so in the Courts of Appeal and Special Appeal.

*Held*, that the objection was a valid one.

*Also* that the defect of jurisdiction could not be cured by the production of a written authority in the Court of Special Appeal.

THIS was a special appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge at Ratnagiri, in Appeal suit No 87 of 1868, confirming the decree of Ragho Narayan, Munsif of Vingurla.

\* PER CURIAM (FORBES and TUCKER J J.):— The Court is clearly of opinion that the question at issue between the parties in this Court is a 'caste question' and one which is consequently excepted from the cognizance of the Civil Courts. A man of the weaver caste sues to obtain a declaration of his right to be recognized as the head of the said caste, and to receive from certain other members of the caste, on certain public occasions, the privileges and precedence accorded to the holder of that office, notwithstanding that they have elected another person to that position. The case is clearly distinguished from the special appeal No. 3675 (4 Morris p. 118) and the other suits for *manpan* which have been cited. In those cases a person, claiming to be the head of a particular village or District, demanded a recognition of his right to precedence, on occasions of ceremony, from all the householders of the said village or district; but the present action is substantially a claim to enforce the recognition, by a particular caste, of the plaintiff as its head, and in determining it the Court would be called upon to interfere with the autonomy of the caste and might, by the application of the ordinary rules of inheritance, be called upon to compel the caste to accept a chief whom they were unwilling to acknowledge. Section 21 Reg. II. of 1827 appears to the Court to have expressly prohibited the interference of the Court in such matters, and, therefore, though the Court does not concur in the reasoning of the Assistant Judge, it is of opinion that the decree must be confirmed.