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We reverse the conviction and sentence on the first prisoner and the conviction and sentence passed upon the second prisoner under Sections 471 and 109 of the Indian Penal Code. On the facts found by the Courts below, we cannot interfere with the conviction recorded against the second prisoner under Section 182 of the Indian Penal Code, but we remit so much of the sentence as has not been already undergone.

Order accordingly.

APPELLATE CIVIL JURISDICTION.

January 21.

Special Appeal No. 468 of 1872.

VITHAL KRISHNA JOSHI.....*Plaintiff and Appellant.*

ANANT RA'MCHANDRA.....*Defendant and Respondent.*

Village Priest—Disturbance of office—Fees, action for loss of.

A suit for damages may be brought by a person holding the office of village priest by prescription against an intruder who deprives him of the exercise and benefits of that office.

THIS was a special appeal from the decision of H. J. Parsons, Assistant Judge at Ratnagiri, reversing the decree of the Subordinate Judge of Malwan.

Vithal Krishna Joshi brought this suit against Anant Rámchandra to establish his right to a half share in the *Joshi-pan* and *Bhatpan Watan* in the village of Rede and to recover profits wrongfully received by the defendant. Anant Rámchandra denied the plaintiff's right to the alleged half share in the *Watan*. The Subordinate Judge held the plaintiff's right to be a half sharer in the *Watan* proved, but rejected his claim to the profits. In appeal, the Assistant Judge reversed his decree and threw out the plaintiff's claim, on the ground of his failure to show that the defendant was under any obligation not to officiate as a priest in the village of Rede.

In special appeal, it was contended for the plaintiff, that, as he claimed an exclusive right to officiate as a priest in the village of Rede, and as his claim was quite in accordance with the custom of the country and the rulings of the High

Court, the lower court was wrong in throwing out his claim, on the ground, that he (plaintiff) did not show any contract on the part of the defendant not to officiate in the village.

The special appeal was argued before WESTROPP, C. J., and WEST, J.

Bhairavnáth Mangesh for the appellant.

Ghanáshám Nilkantha for the respondent.

WEST, J. :—The plaintiff, in this case, sued for damages on the ground that the defendant had officiated as a village priest at Rede, in the Ratnagiri District, and taken the fees, whereas the right belonged solely to the plaintiff and his family, of which the defendant was not a member. The Subordinate Judge found that the plaintiff had established his title as a half-sharer in the office and its emoluments to the exclusion of the defendant, and awarded him enjoyment without interference; but he threw out the claim for damages, because it was not proved how much the defendant had made by his intrusion. On appeal, the Assistant Judge wholly rejected the plaintiff's claim, on the ground, that "it is not shown nor alleged that the defendant ever bound himself by any contract not to officiate in the village." This judgment he fortified by reference to a previous one, in which a lessee of the office from the plaintiff had brought a similar suit against the defendant without success.

It does not appear to us that the proposition involved in the Assistant Judge's decision, is one that can be sustained as a general principle of law. Where an office is instituted for the benefit or convenience of the community, the person who holds the office, by legal appointment or prescription, may obtain damages for any usurpation which deprives him of the exercise and the profits of that office. This is established by the Kázi's case, *Muhammad Yussub v. Syad Ahmed* (a), and the authorities there referred to, which show both, that in the circumstances supposed, customary fees may be demanded for services rendered, and that, where an action on this ground could be maintained against the persons benefited, a person wrongly taking the fees may be made to hand them over to the office-holder. It is only necessary to add

(a) 1 Bom. H. C. Rep., App. xviii.

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to the doctrines there laid down, that the fees payable to an office-holder need not be of a fixed, but may be of a reasonable, amount, as ruled in *Bryant v. Foot* (b). And if the right subsists, an infringement of it is equally a wrong and equally actionable, whether the wrong-doer has agreed to respect it or not.

The office of village priest seems to have been uniformly considered as one to be regarded as of benefit to the Hindu community, and as thus giving to its legal holder a claim to protection and relief against any invasion of his privileges. In *Mooljee Purseram v. Nagur Ramjee* (c) it was ruled that the priest of the Katchya sect, in a particular division of the city of Surat, could recover damages both from the priest who had wrongly officiated at a marriage, and from the person who had employed him. This ruling was confirmed in the case of *Muncharam Shunkaram v. Umba Pragjee* (d) which recognized the obligation of the "Yajman" not only to pay his *Kulguru*, the fee for the "Shrimat" ceremony, but to employ him in performing it. In the subsequent case of *Pandooring Succaram v. Balumbhut* (e), the plaintiffs sued as village "joshis" for fees due on a marriage. Of the numerous ceremonies proper to such an occasion, it appeared that eighteen had been performed. The defendants admitted that the plaintiffs were entitled to fees on eight of these; for the remainder they contended that nothing was due as they had been performed, not by the plaintiffs but by the defendants' family priest or *Upādhyā*; but as the rites had been performed, the Sudder Court awarded payment of the fees or of a sum in default, though, as the amount of the fee in each instance was declared optional, it was left open to the defendants to escape the effect of the decree by a nominal compliance with it.

In the case of *Krishnumbhut v. Anant* (f), a similar question came under consideration, and the Sudder Court, in disposing of the appeal, said: "The rule of the Court has

(b) L. R. 3 Q. B. 497, 508.

(c) Sel. Cases, Bom. 131.

(d) Ibid 181.

(e) Ibid 196.

(f) 4 Morr. 111.

consistently been that certain ceremonies are optional ; but that when these or other obligatory ceremonies have been performed, the person entitled of hereditary right to perform them is entitled to be paid his fee, whether he perform them or not." The decree of the Court was, that the respondents, who had employed another priest, should pay to the appellant the same amount by way of fees as they had previously paid to the person actually employed. By this payment, it seems to have been considered, the defendants had practically shown what, in their own opinion, it was right and reasonable for them to pay. And in the case of *Ramchunder Bapoojee v. Ramchunder Lukshmun (g)*, the Judges say they consider "the remarks, that a Brahman may employ whom he likes as his *Upādhyā*, is opposed to the custom of the country," though, as in the particular case, the plaintiff's right was not proved, the decision of the Court below in favour of the defendants was not interfered with.

Of the cases decided since the establishment of the High Court, the most important for the purposes of the present appeal are Special Appeals 368 of 1869, and 291 of 1872. In the former of these, *Sitárambhat v. Sitáram Ganesh (h)*, COUCH, C. J., says "It is settled law, that if a person usurps the office of another, and receives the fees of the office, he is bound to account to the rightful owner for them. Where the payments are merely voluntary, the case is different, and no suit can be brought. * * * The parties who have wrongfully received the fees are liable to pay them over to the parties entitled to them." But as the plaintiff had not been properly represented in the cause, the claim was rejected. In the recent case, Special Appeal 291 of 1872, however, a *Grám-upādhyā*, holding under a *sanad* from the Peshwa, was held to have a good cause of action against the *Yajmán*s who had employed another *Bhat*, but none against the *Bhat*, whose employment by the villagers had been purely voluntary. It

(g) 9 Harr. 537.

(h) 6 Bom. H. C. Rep. A. C. J., 250.

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is clear that he could not be entitled to recover from both, and that if he obtained a decree against the *Yajmán*s, he could not obtain one against his rival *Bhat* also.

The result of the cases appears to be that the office of a village priest is one which may well be established by grant or prescription, and that if a person, not entitled; assumes to act in the office and receives the fees, he may be made to refund them. The case last cited and some of the cases in the *Sudder Adawlut* seem to lend support also to the proposition that the villagers employing a priest independently of his character as *Grám-upádhyá*, or *Joshi*, must, if they have ceremonies performed in which the office-holder ought to take part, pay the fees, whether they employ him or not; but this is a point not arising for disposal in the present case, and on which we do not intend to express any opinion. The employment of a *Kazi*, it was said in the *Kazi's case* already referred to, is not compulsory; but those, who desire to employ a *Kazi*, cannot set up one of their own, and yet the remedy was given to the plaintiff against the intruding *Kazi*. In many cases, though the payment of a fee is compulsory, yet, according to the Hindu law, the amount appears to be optional. None of the English decisions go to the length of saying, that where the payment to be made depends solely on the good will or conscientiousness of the donor to whom the service is rendered, an action can be maintained against an intruder who has received what that law regards as a mere gratuity; but the rule may be quite different where, as under the Hindu system, though the amount of the priest's fee is left to the conscience and the means of the person for whom his functions are performed, yet the payment of some fee is regarded as essential to the efficacy of the ceremonies performed. However difficult, therefore, it may be for a village priest to sue with effect a *Yajmán* who cannot be ordered to pay any definite amount, yet when the suit is brought against a usurper of his office, it cannot be but that the office-holder has suffered to some extent by the intrusion. What the

damage sustained has been is a matter for computation according to the circumstances of each case; but as there has in such a case been an undoubted injury, the law will not refuse a remedy merely because its amount in money does not admit of precise estimation.

In the present case, the suit is brought only against an alleged intruder into the office of village priest. If the plaintiff establishes that the office exists, that he is sole or part holder of it, that there are emoluments attached to it, and that the defendant has, without right, acted in the office and received the emoluments or some of them, he is entitled to damages for the intrusion. We, therefore, reverse the decree of the Assistant Judge, and remand the cause for retrial, and a new decree on the merits. Costs to follow the final decision.

Decree reversed and suit remanded.

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. JIBHÁ'I VAJA'.

Giving false evidence—Non-judicial Proceeding—Power to administer oath.

In a non-judicial proceeding, the object of which is to discover the writer of a scandalous petition, it is not competent for the Magistrate conducting the proceeding to administer an oath.

The High Court reversed a conviction for giving false evidence where an oath was administered under the above circumstances.

THIS case, in which the accused was convicted of giving intentionally false evidence in a non-judicial proceeding, was called for on an examination of the Magisterial Criminal Return of the District of Kaira for September 1873.

The facts of the case, in so far as they are material, are as follows:—

The accused Jibhá'i was alleged to have taken part in a petition to the District Magistrate of Kaira, Mr. Propert, in the matter of the nomination of a Mukhi Pátíl by Mr. Sheppard, the predecessor of Mr. Propert, in which petition remarks were made about Mr. Sheppard, which Mr. Propert

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February 19.