

5 B. 83.

## [83] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., and Mr. Justice M. Melvill.*GIRDHAR AND OTHERS (*Appellants*) v. KALYA AND OTHERS  
(*Opponents*).<sup>\*</sup> [23rd August, 1880.]*Caste question—Jurisdiction—Suit to recover cooking vessels—Regulation II of 1827, s. 21.*

A claim by the members of one division of a caste against the members of the other division of that caste, for recovery of half of certain vessels belonging to the caste or their value is a caste question within the meaning of s. 21 of Regulation II of 1827, and cannot be made the subject-matter of a suit cognizable by a Civil Court.

[R., 19 B. 507 (521); 26 B. 174 (188, 189); 34 B. 467 (483) = 11 Bom.L.R. 1014 = 4 Ind. Cas. 108; D., 23 B. 122 (129, 130); 9 Bom.L.R. 569 (577).]

THIS was an application for the exercise of the High Court's extraordinary jurisdiction and to obtain the reversal of the decree of G. Druitt, Acting Assistant Judge of Surat, which reversed the decree of the Subordinate Judge of Broach.

The parties to the suit belonged to the Ghanchi caste, and were inhabitants of the town of Broach. In consequence of a dispute relating to the apportionment of certain marriage fees, the caste was divided into two factions. As usual amongst the inhabitants of Gujarat, the caste owned a number of cooking vessels which continued in the possession of the persons who had charge of them before the secession took place. The persons in possession and others who sided with them, objected to their use by the seceders, who, therefore, sued them to recover half the vessels or their value.

The defendants *inter alia* contended that the suit was not of a nature cognizable by the Civil Court as the claim involved a caste question, from the cognizance of which it was barred by s. 21 of Reg. II of 1827.

The Subordinate Judge disallowed this contention; the Assistant Judge considered that it was right on the strength of the Full Bench decision in *Nemchand v. Savaichand* (1). The subject-matter of the claim involving less than Rs. 500, no appeal lay to the High Court. The plaintiffs, therefore, made this application for the exercise of its extraordinary jurisdiction.

[84] On the 4th of March, 1880, PINHEY and F. D. MELVILL, JJ., granted a *rule nisi*, calling on the defendants to show cause why the decree of the Assistant Judge should not be reversed and that of the Subordinate Judge restored.

*Nanabhai Haridas*, Government Pleader, for the applicants, relied on *Dullabh Jogi v. Narayan Lakhu*(2).

*Shantaram Narayan*, for the opponents in showing cause, relied on *Nemchand v. Savaichand*, the case cited by the Assistant Judge.

## JUDGMENT.

PER CURIAM.—Following the decision in the Full Bench case of *Nemchand v. Savaichand*, the Court discharges the rule with costs.

*Rule discharged.*

<sup>\*</sup> Extraordinary Application No. 24 of 1880.

(1) Unreported, but see note *infra*.

(2) 4 B. H. C. R. 110.

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NOTE.—The case of *Nemchand v. Savaichand* (S.A. 591 of 1865) was decided on the 31st of July 1866, by COUCH, NEWTON, TUCKER, WARDEN and GIBBS, JJ. The suit in that case was brought by certain members of the Sharavak caste at Surat to obtain a decree declaring them to be the proper recipients of half the compensation granted by the Collector of Surat, in regard to certain shops belonging to the caste which had been divided into two factions, the plaintiffs forming one and the defendants the other of such factions. The defendants contended that the cognizance of the suit by the Civil Court was barred by s. 21 of Regulation II of 1827. The Munsif of Surat having allowed the claim, the defendants appealed to the Judge who raised three issues, of which the first was, "Is this a caste question with which a Court cannot interfere by law?" He decided the issue in the affirmative for the following reasons:—

"The property in which a right is sought to be so established as caste property belonging to a temple, respecting the disposal of which the caste alone adjudicate, none of the caste have any individual right in it, and the plaintiffs' only claim is on the ground that they have seceded, or rather that the caste has split into two divisions, and they demand a declaratory decree proclaiming the said right to the half of the said compensation money awarded by the Collector for certain houses, the property of the caste temple. Now this seems to me to be clearly a caste question: who but the caste can decide whether the plaintiffs had sufficient reason for separating themselves from the rest of the caste, and who but the caste can decide whether a seceding party has any right to the religious caste property?"

"In the circumstances of this case I cannot see that there is any alleged injury to the caste and character of the plaintiffs arising from any illegal or unjustifiable conduct of the other parties. The question of plaintiffs' right to the half the temple property is simply a caste question; it is not a right of any individual, nor can it be looked on as affecting the separate individual right of the parties. It is a question solely affecting the well-being of the caste, and, as such, I consider the Court cannot interfere."

[85] Against this decision the plaintiffs appealed to the High Court, urging that the District Judge was wrong in holding that the question involved was a caste question not cognizable by the Civil Court, and that it related merely to a civil right, *viz.*, a right of property. A Full Bench of the High Court, consisting of the Judges named above, confirmed the decree of the District Judge.

[F., 5 B. 83; R., 19 B. 507 (521); 26 B. 174 (188, 189); 34 B. 467=11 Bom. L.R. 1014=4 Ind. Cas. 108; D., 12 B. 225; 9 Bom. L.R. 569 (577).]

5 B. 85=5 Ind. Jur. 428.

## [85] APPELLATE CRIMINAL.

*Before Sir Charles Sargent, Kt., and Mr. Justice M. Melvill.*

*EMPRESS v. JAFAR M. TALAB.\** [22nd September, 1880.]

*Presidency Magistrates' Act, No. IV of 1877, s. 167, Plea of guilty—Conviction—Sentence.—Appeal.*

Where a person has, on his own plea, been convicted on a trial held by a Presidency Magistrate, an appeal to the High Court, on the ground that the conviction was illegal and therefore also the sentence, does not lie according to the provisions of s. 167 of the Presidency Magistrates' Act No. IV of 1877, albeit that the Magistrate has sentenced the person to imprisonment for a term exceeding six months or to a fine exceeding two hundred rupees.

THIS was a petition of appeal purporting to be under s. 167 of Act No. IV of 1877, praying for a reversal of the sentence of a fine of Rs. 250 passed on him by C. P. Cooper, Chief Presidency Magistrate of Bombay.

By virtue of the authority vested in the Municipal Commissioner for the city of Bombay by s. 74, cls. 1 and 2 of the Bombay Municipal Acts of 1872 and 1878, the accused Jafar Talab was required by a notice, dated the 1st of October 1879, to make a true return in writing showing the rent or annual value of a house belonging to him. The said accused was

\* Criminal Appeal No. 2 of 1880.