

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

1887.  
March 15.

PRA'GJI KALAN AND OTHERS, (ORIGINAL PLAINTIFFS), APPLICANTS, v.  
GOVIND GOPAL AND OTHERS, (ORIGINAL DEFENDANTS), OPPONENTS.\*

*Regulation II of 1827, Sec. 21—Caste question—Jurisdiction of Civil Courts over suits involving a caste question—Suits to recover caste property from a member of the caste.*

Section 21 of Regulation II of 1827 does not debar a Civil Court from taking cognizance of a suit in which a question of a caste rule or of membership of a caste may be raised by way of answer to a claim for property or on a breach of contract. The section provides that there shall be no interference on the part of the Court in caste questions. But to take evidence of the customary law of a caste, to recognize the law and the vote of a majority as given effect to by the law, is not to interfere in caste questions; it is simply to recognize the existence of caste as corporations with civil rights and an autonomy suitable to the purposes of their existence.

Certain members of one division of a caste borrowed vessels for use from the priest of that division, and then seceding to the other division refused to return them. A suit was brought to recover possession of the vessels in question.

*Held*, that the suit was cognizable by the Civil Court, notwithstanding that incidentally a question as to the relations of the caste divisions might arise for decision.

THIS was an application, under section 622 of the Civil Procedure Code (Act XIV of 1882), for revision of the order of K. Hormusji, Judge of the Small Cause Court at Broach, in Suit No. 162 of 1885.

The parties to this suit were members of the Katchia caste of Broach. The caste was divided into two factions, one called the *Mothá Tad* (or larger division), the other called the *Náhná Tad* (or smaller division). Both parties were at first members of the larger division. In 1881, differences arose between them, and the defendants went over to the opposite faction. Before their secession they had obtained, on loan, certain cooking utensils belonging to the larger division under pretext of giving a caste dinner. These they refused to return to the caste priest, in whose custody they were usually kept. Thereupon the plaintiffs, as the leading members of the larger division, brought a suit to recover possession of the utensils lent to the defendants.

\* Application, No. 137 of 1886.

The suit was at first filed in the Court of the Second Class Subordinate Judge of Broach, but it was dismissed by the High Court, on second appeal, on the ground that it was of a nature cognizable by a Small Cause Court; and as there was a Small Cause Court at Broach, the Second Class Subordinate Judge had no jurisdiction to entertain the suit—*Kalián Dayal v. Kalián Narer*<sup>(1)</sup>.

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A fresh suit was thereupon filed in the Court of Small Causes at Broach. It was dismissed, on the ground that it involved a caste question, of which a Civil Court could not take cognizance under section 21 of Bombay Regulation II of 1827<sup>(2)</sup>.

Against this decision the plaintiffs made the present application to the High Court under its revisional jurisdiction.

A rule *nisi* having been granted,

*Gokuldás Kahándás* appeared for the applicants.

*Nagindás Tulsidás* for the opponents.

WEST, J. :—Section 21 of Regulation II of 1827 seems to have been misapplied in this case, as it frequently is, on a construction of the enactment which would destroy the castes by making them the prey of their most unprincipled members. The section does not say that a Civil Court is not to take cognizance of any case in which a question of a caste rule or of membership of a caste may be raised by way of answer to a claim for property or on a breach of contract. What it says is that “no interference on the part of the Court in caste questions is hereby warranted” in the large classes of cases immediately before specified as subjects of cognizance, and in which questions of caste law must incidentally arise from time to time. The words, too, are followed by the exception “beyond the admission and

(1) I. L. R., 9 Bom., 259.

(2) Section 21 of Regulation II of 1827 provides as follows :—

The jurisdiction of the Civil Court shall extend to the cognizance of all original suits and complaints between natives and others (not British-born subjects) respecting the right to moveable or immoveable property, rents, Government revenues, debts, contracts, marriage succession, damages for injuries, and generally of all suits and complaints of a civil nature, it being understood that no interference on the part of the Court in caste questions is hereby warranted beyond the admission and trial of any suit instituted for the recovery of damages on account of an alleged injury to the caste and character of the plaintiff arising from some illegal act or unjustifiable conduct of the other party.

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trial of any suit instituted for the recovery of damages on account of an alleged injury to the caste and character of the plaintiff arising from some illegal act or unjustifiable conduct of the other party." Hence it is plain that the Civil Courts may discuss and deal even with a caste question where the membership and the character of a member have been unjustly injured. To take evidence of the customary law of a caste, to recognize the law and the vote of a majority as given effect to by the law, is not to interfere in caste questions; it is simply to recognise the existence of castes as corporations with civil rights and an autonomy suitable to the purposes of their existence. See *Murári v. Suba* <sup>(1)</sup>. The cases under the English law of clubs and congregations afford useful analogies; and besides *Brown v. Curé of Montreal* <sup>(2)</sup> we may refer to *Hopkinson v. Marquis of Exeter* <sup>(3)</sup>, *Dawkins v. Antrobus* <sup>(4)</sup>, *Gompertz v. Goldingham* <sup>(5)</sup>. The Court in dealing with such cases does not interfere in club questions so as to impair the autonomy of the club, but it would not allow one member or six to take possession of all the club plate on a mere assertion that they had as good a right to it as any one else.

In the present case, it is alleged that certain members of a division of a caste borrowed vessels for use from the priest of that division, and then seceding to the other division refused to return them. If the statement is true, the borrowers could not escape liability under their contract of loan, merely because an incidental question of the relations of the divisions and of the members under the terms of incorporation might arise for decision. As castes are capable of property, they are entitled to protection in its enjoyment, and they may be represented by a group of their members, as in this case.

Without determining any question beyond this, that a *prima-facie* case appears cognizable by the Civil Courts, we set aside the order of the Small Cause Court Judge, and direct that he deal with the case on its merits. Costs of this application to follow the final decision.

*Order reversed.*

(1) I. L. R., 6 Bom., pp. 725, 727.

(3) L. R., 5 Eq. Ca., 63.

(2) L. R., 6 P. C., p. 157.

(4) L. R., 17 Ch. Div., 615.

(5) I. L. R., 9 Mad., p. 319.