ORIGINAL CIVIL.

Before Mr. Justice Scott.

THE ADVOCATE GENERAL OF BOMBAY, AT THE RELATION OF ARRAN JACOB AWASKAR AND OTHERS, (PLAINTIFF), *v.* DAVID HA'IM DEVAKER AND TWO OTHERS, (DEFENDANTS).*

1886. *July* 6.

Jews—Beni-Israelite community in Bombay—Dismissal of officers of the community by resolutions passed at a meeting—Such officers to be given opportunity of defending themselves—Domestic tribunal—Jurisdiction of Court.

The plaintiffs and the defendants were members of the Beni-Israelite community worshipping at a certain synagogue in Bombay. The administration of the synagogue and of the funds was vested in a *mukádam* or head-man and four managers, a treasurer, and a crier. The *mukádam* succeeded to the office by family right according to the custom of the community, but in matters of management he was bound to keep within his powers, which were co-ordinate with those of his colleagues.

The first defendant was the *mukádam*, the second defendant was the *hazan* or beadle, and the third defendant was the *samost* or crier. The first defendant had succeeded to the office of *mukádam* as the nearest lineal descendant of the founder of the synagogue. The second defendant was appointed by the community, and it did not appear on what terms he held office. The third defendant was merely a paid official of a subordinate character.

Disputes arose in the community, which became divided into two parties, to one of which the three defendants belonged. At a meeting of the community held on the 28th October, 1884, which was attended by a majority of the community, resolutions were passed, dismissing all three defendants from office; and their dismissal was formally communicated to them by a letter dated the 30th October. It did not appear that they had been given any notice that the question of their dismissal was to be discussed at the meeting. They had received only the ordinary notice that a meeting was to be held. The defendants refused to recognize the authority of the resolutions passed at the meeting of the 28th October, and the plaintiffs, accordingly, filed this suit, praying for a declaration that the defendants did not occupy any official position in the synagogue, and for the recovery of certain property in their hands.

Held, that the first defendant had not been duly dismissed. He held the office of *mukádam*, not merely at the will of the community, but as long as he duly performed the duties of his office. He could not be dismissed without an opportunity of making his defence and explaining his conduct, and he had been given no notice that his conduct and his dismissal were to be discussed at the meeting of the 28th October.

Held, also, that the second defendant had not been duly dismissed. No evidence was given as to the exact terms on which he held office; but he was entitled to notice, and to an opportunity of defending himself before dismissal.

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Held, as to the third defendant, that he had been duly dismissed. He was merely a subordinate officer, and the managers had the power of dismissing him. All the managers, save the first and second defendants, concurred in dismissing him, and in doing so they were within their right.

Where a domestic tribunal has been appointed for the regulation of the affairs of a community, the Court has no jurisdiction to interfere with its decisions if it acts within the scope of its authority and in a manner consonant with the ordinary principles of justice.

THIS suit was filed by the Advocate General at the relation of the managers of the Beni-Israelite community of Samuel Street synagogue in Bombay. The said managers were also plaintiffs on behalf of themselves and all other members of the community of worshippers at the said synagogue, which was known as the Old Synagogue. The defendants were members of the same community, and were worshippers at the same synagogue. The first and second defendants were, respectively, the *mukádam* or head-man and the *hazan* or beadle of the synagogue. The third defendant was the *samost* or crier.

The plaint stated that the synagogue was established in A. D. 1796, and the worshippers then had the power of appointing persons to carry on the management thereof.

In 1871, at the general meeting of the worshippers, the first defendant was appointed *mukádam* or head-man of the community. He, however, managed the affairs in a manner so displeasing to many members of the community that they seceded from the synagogue and worshipped elsewhere. By the year 1884 the seceders had acquired considerable funds and certain valuable property used in the performance of their worship. At that time very few worshippers continued to attend the Old Synagogue.

In January, 1884, a reconciliation was effected with the seceders. The terms of agreement were reduced to writing, and agreed to by the whole community.

In pursuance of the terms of this agreement, one Samuel Elloji Gubbay, who held the funds of the seceders, handed them over to the *jamát* of the community; but as managers had not at that time been appointed, as provided in the agreement, he was requested to pass a promissory note for the said amount in the name of the first and second defendants as *mukádam* and manager respectively,

which he accordingly did on the 8th March, 1884, and handed the note to the first and second defendants. The plaintiffs alleged that the said Samuel Elloji Gubbay had always been willing to account according to the terms of the said agreement, and to carry out the wishes of the community.

In April, 1884, four managers were appointed, and the second defendant was called upon to hand over to them about Rs. 1,400, the funds of the said synagogue. The second defendant refused to do so, alleging that he held the said funds under the order of the first defendant, who had prohibited him from so doing.

The plaint also alleged that several sums of money had been paid to the first defendant, to be expended by him in behalf of the community, but that he had refused to give any account of the same; also that the defendants had been entrusted with the keeping of certain furniture, books, and articles used in worship, &c., but that they had refused to allow the same to be used by the members of the community, and had retained possession thereof.

The plaint alleged various other acts of misconduct on the part of the defendants, and stated that on the 28th October, 1884, a general meeting of the community was held, which was attended by about three hundred out of a total number of four hundred members. The meeting unanimously resolved that the three defendants should be dismissed from the official positions which they respectively held in the community, and that proceedings should be taken to recover from them the said moneys, furniture, books, &c.

The defendants refused to recognize the said resolutions, or to obey the wishes of the community, or to hand over the said property. The plaintiffs, accordingly, filed the present suit, and prayed (*a*) that it might be declared that the defendants did not occupy any official position in the said synagogue, or in regard to the worship or management thereof; (*b*) that the defendants should be ordered to deliver up the aforesaid money and other property; (*c*) for an injunction and receiver; (*d*) that a scheme might be framed for the protection and management of the property of the synagogue, &c., &c.

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The defendants put in a written statement, denying the allegations of the plaint. At the hearing, issues were raised as to whether the defendants had been properly dismissed from their offices, and as to whether the meeting held on the 28th October, 1884, had power to dismiss the first defendant—whether the said meeting had been duly held, and as to the right of the plaintiffs to recover the aforesaid property from the defendants.

Latham (Advocate General) with *Macpherson* and *Telang* for the plaintiffs.

Lang and *Dhairyaván* for the defendants.

The following authorities were referred to:—*Rája valad Shivapa* v. *Krishnabhat*(1); *Cooper* v. *Gordon*(2); *Hopkinson* v. *Marquis of Exeter*(3).

August 20. SCOTT, J.:—It is much to be regretted that such a case as this should be brought into Court. It affords a melancholy instance of the ruinous extent to which strong personal and party feeling may be carried. But I have nothing to do with these considerations. It is my sole duty to decide according to the legal rights of the parties.

The suit is instituted by the Advocate General at the relation of the managers appearing for themselves and the community of worshippers of the Beni-Israel synagogue situated in Samuel Street, Bombay, against three other members of the same community. The plaintiff asks (*a*) for a declaration that the three defendants do not respectively occupy the position of *mukádam* or head-man, *hazan* or beadle, and *samost* or crier, of the synagogue; (2) for a discovery and account of all moneys and notes, furniture, ornaments, and books in their hands; (3) for an injunction restraining them from all interference with the worship and management; (4) for a receiver; (5) for an account, by the first defendant, of Rs. 250; and (6) for the delivery of possession of the synagogue premises by the third defendant. The community, which only counts about four hundred male adults, has been in India for many hundreds of years, and has retained its belief, its tenets, and its customs intact in spite of its isolation amongst the mil-

(1) I. L. R., 3 Bom., 232. (2) L. R., 8 Eq., 249.
(3) L. R., 5 Eq., 63.

lions of followers of other creeds. Down to the close of the last century they had no regular place of worship. But in 1796, one Samuel Ezekiel, a prominent member of the Beni-Israel community, provided the funds both for the site and for the building of a synagogue. This synagogue met the requirements of the community down to 1860, when it was pulled down to make room for a larger and more commodious building on the same site. This second house of worship is the one actually in use, and its cost was met partly by mortgages and partly out of the funds which had gradually accumulated by the payment of ceremonial and other fees by the whole community. A tablet was put up on the wall of the present building to the honour of the founder of the original synagogue, with an inscription that runs as follows:—"The synagogue was built by Samuel Ezekiel Devaker, commandant, 6th Battalion, 1796, which being too small was enlarged and rebuilt at the expense of the Beni-Israel community on the 24th March, 1860."

The administration of the synagogue and the funds appears to have been till recently as follows:—Samuel Ezekiel, the founder, was *mukádam* or head-man of the synagogue during his life. But although he was thus recognised as the head of the community, he was not by any means the sole administrator of its affairs. There were also four managers, a treasurer, and a crier, who took part in the administration. Since the founder's death, the head-manship has remained in his family through the stock of his adopted son. But there have been two cases of removal from office for misconduct. In the first instance, one Ezekiel Abraham was substituted, and, in the second instance, the present first defendant, David Háim, the great-grandson and nearest living representative of the founder, received the office. This was in 1872, and David seems to have held the post for some years without opposition. But Ezekiel came back into office for a time as David's coadjutor. In 1877-78, disputes arose, and became so acrimonious, that after squabbles in the Police Court, an abortive attempt at a reconciliation, and an award which neither dealt conclusively with the head-man's rights, nor was binding on the whole community, a schism of the community

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took place, and a large party under the lead of the treasurer, Samuel Elijah, opened another prayer hall. It seems to me this is the true course to take when differences are irreconcilable in these congregations. Harmony is only possible if the minority yield to the majority; and if it refuses to submit, it is far better for the minority to recede and form another harmonious congregation than to continue as contentious and recusant members of a congregation, which must, in consequence, be disturbed by passions that ought not to exist among persons meeting together for divine worship.

Meanwhile, David in 1878 left Bombay, and became *faujdár* at Janjira, where he remained several years, going from thence to Alibág as head constable. He returned to Bombay in 1883, and took over the office of head-man from the second defendant, the chief manager, to whom he had delegated the duties. But David did not remain in Bombay. He went to Poona to study for the law, where in due time he was admitted to practice as a pleader. In 1883, negotiations were opened between the two parties with a view to a reconciliation, which was effected, and a deed was signed by many representatives of both sides on the 28th January, 1884. The terms of this deed are important. First, as regards the funds of the two sections, they were to be amalgamated, and after deducting Rs. 500 for current expenses they were to be invested in Government notes purchased in the names of four managers—two from each side. David Háim was "to hold the office of *mukádam* hereditarily. This honour of his is always to be continued to him hereditarily." The other important provisions are that the managers of both sections are to remain in office, and there are to be two treasurers also. Things went smoothly at first, and in March, 1884, all the crowns and other paraphernalia held by the secessionists were brought back to the Old Synagogue in solemn procession, and received with great pomp. An address was read to the first defendant in the synagogue by a leading secessionist, which recognised his hereditary position and the debt of gratitude due to his family. This address has since, however, been repudiated as sprung upon the meeting without notice, and as a matter of fact it was

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not subsequently signed by those who had attended. From this point, discord seems to have sprung up again. The four managers ordered by the deed were appointed; but although the treasurer of the secessionist party was quite ready to pay over what funds he had, the second defendant refused to perform his part. He assigned, as the reason of refusal, the orders of the first defendant. As a matter of fact, the money was never paid in the manner prescribed, but was given subsequently to the first defendant, who applied it in support of a suit brought by his party against the secessionist treasurer for an account. Coincident with this first breach of the reconciliation deed, there arose a dispute as to the mode in which the use of the ceremonial pots and pans was given to the community. Previously they had been in the charge of the crier, who let them out on a receipt being given to him by the applicant. But in May, 1884, the first defendant interfered with this usage, and forbade their being let, save on a receipt being given for them in his name instead of the name of the crier. The object of this change was avowedly to prevent pots being carried off by a seceding party, as had previously happened. At this same time, the first defendant circulated a draft trust deed for approval (exhibit O), in which he formulated a claim, as *mukádam*, to control future expenditure in a manner that was inconsistent with the rights of the treasurers and the managers, to whom such financial control had been entrusted by the reconciliation deed. Somewhat earlier than this, in 1884, Rs. 250 had been entrusted to David to obtain counsel's opinion for the community, and his persistent refusal to produce the opinion was an additional cause of dispute. The discord was further aggravated by other acts, such as the posting of a set of rules on the synagogue without previous consultation with the managers.

Things went on uncomfortably till October, when they at last came to a climax, as in summonses and counter-summonses in the Police Court. The malcontents, headed by the treasurer of the former secessionists, then summoned a meeting of the *panch* for the 26th October, 1884. They sent the criers round, but it is admitted that no special notice was given of the particular business that was to be done. The notices were sent

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out in the morning, and the meeting was held in the evening. There is a conflict of evidence as to whether the first defendant was summoned in the morning or only in the evening; but, at any rate, it is clear that he had no notice of what was to be done, and protested against the hurry as irregular. The resolutions passed at this first meeting (exhibit 8) show that a special messenger was sent to him from the meeting, asking him to come with the books; that he replied that he was engaged, and had left the keys at Poona. The account goes on to show that three persons then complained of the police proceedings taken against them by David Háim, and it was resolved to call a meeting of the community on the 28th, and to summon David Háim to come and account for the Rs. 250 entrusted to him, in order that he should obtain counsel's opinion. The *panch* thus, on their own admission, only ordered David to have notice that the Rs. 250 were to be discussed on the 28th at the meeting of the community. The community was summoned on the 27th for the 28th, but it does not appear that any notice was given of the special business to be transacted. It is quite clear that the defendants had only the ordinary notice that there was to be a meeting of the *jamát*. It was, however, contended that the defendants must have known what was going to be done, because the crier attached to their party was at the *panch* meeting, and must have told his chief all that happened. Even admitting that was so, the plaintiffs' case would not be improved, as it appears from the resolutions (exhibit S) of the first meeting that the dismissal of the defendants was not then resolved upon, nor even discussed. I must conclude, from these facts, that the first defendant and also the other defendants had no previous notice that their dismissal was to be discussed at this meeting of the 28th instant. David tried to prevent the meeting by closing the doors of the synagogue; but the meeting took place, a majority of the whole community attended it, all three defendants were dismissed, and the dismissal was formally communicated by lawyer's letter on the 30th October. There is nothing in the evidence which conclusively shows any knowledge, on the part of the defendants, of the fact of the dismissal before that date. They on their side had also taken action. On the morning of the 27th October, they summoned a meeting of the

community, without going through the usual preliminary of a *panch* meeting, and notified, as the object of the meeting, the question of the reconciliation deed. At the meeting itself, which was attended by a minority of the whole community, they declared the deed void, excommunicated the treasurer and his followers, and pronounced the meeting summoned by that party for the 28th to be illegal. It was not proved that these resolutions were confirmed at any subsequent meeting. From that time forth the two parties have definitely parted company, and the treasurer's factions have had possession of the synagogue ever since.

At the hearing, before the defendants' case was reached, I ordered a meeting of the whole community to be held under the superintendence of an officer of the Court. I did so, because the defendants' counsel was prepared with evidence that the signatures at the meeting of the 28th October had been improperly obtained, and I thought the time of the Court would be saved if a regularly convened meeting voted on the question whether the community wished to retain the first defendant as their *mukádam*, with the powers he claimed for himself, or with the powers of a manager, or with merely honorific functions. Three hundred and seventy members attended and rejected all these proposals either unanimously or by a very large majority. But I held the meeting only for the purpose of saving unnecessary evidence, and I did not intend to regard it as conclusive of the questions raised in the case. I still intended to try the case on the facts as they were at the time of the institution of the suit. It would, I think, be unfair to attach conclusive weight to a vote taken *pendente lite* when one faction is in possession of the synagogue; when both are at the fever heat of party agitation; and when discussion of charges and defence of conduct was impossible.

I will now discuss the case in its legal aspect—dealing, first, with David Háim, the *mukádam* or head-man of the community and synagogue. I had, at first, some doubt whether this Court had jurisdiction to hear this suit, and whether it did not come within the analogy of that class of cases where the Courts, in accordance with section 21 of Reg. II, 1827, have refused to interfere with the autonomy of a caste. But this community is not a caste; and

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not only are honorific distinctions at stake, but also a share in the management of an endowment, and the right to an office of importance and authority. I think in such cases the Court has jurisdiction. This synagogue must clearly be considered an endowment with a founder. No doubt, the original endowment has been largely augmented by fees and donations. But when endowments have been so increased, the gifts are held to be to the institution, and the endowment stands—*Sammantha Pandara* v. *Sellappa Chetti* (1). As regards its constitution, in cases where no rules have been formally prescribed, the intention of the founder must be gathered from the traditional practice, and the succession is determined by usage—*Greedharee Doss* v. *Nundokissore Doss Mohunt* (2). The custom in the present case has certainly been to keep the head-manship in the founder's family, and the succession has passed by family right, and not by election. This was admitted by the plaintiffs' own evidence. But the head-man has never held an autocratic position. The founder himself vested the management in several hands, and not in himself alone. This joint administration was, no doubt, devised as a check and a safeguard, and any act on the part of the head-man altering this constitution would be invalid—*Rajah Vurmah Valia* v. *Ravi Vurmah Mutha*(3).

The position of head-man, then, was this. He succeeded by family right as the nearest lineal descendant of the founder, but at the same time he was bound, in matters of management, to keep within his powers, which were only co-ordinate with those of his colleagues. Then comes the question—the *crux* of the case.—What course could the community adopt in case the head-man exceeded his powers? This community is a private and voluntary religious society resting upon a consensual basis. The law relating to such societies is to be found in *Long* v. *Bishop of Cape Town* (4) and *Brown* v. *Cure of Montreal* (5), and may be summarized as follows :—The members may make rules for themselves, and may constitute a tribunal to enforce the rules, and the decision of that tribunal is binding when it has acted

(1) I. L. R., 2 Mad., 175.
(2) 11 Moore's Ind. Ap., at p. 427.
(3) 4 Ind. Ap., 76.
(4) 1 Moore's P. C. N. S., at p. 461.
(5) L. R., 6 P. C. at p. 208.

within the scope of its authority and in a manner consonant with the general principles of justice. See, also, *Inderwick* v. *Snell* (1). Again, in *Hopkinson* v. *Marquis of Exeter* (2), it is laid down "when the decision of a domestic tribunal has been arrived at *bonâ fide*, the Court has no jurisdiction to interfere."

Now, in the present case, the community has established the *panch* and *jamát* as its domestic tribunal for the regulation of its internal affairs, and sufficient power is entrusted to the managers for the transaction of ordinary business, but in all important matters the will of the whole community is ascertained. This tribunal has met; no irregularity as to the manner of convening it can be suggested with regard to the meeting held by my orders, and it has decided that David Háim is no longer fit to exercise the functions of *mukádam*. Has this Court jurisdiction to interfere in order to uphold this decision? On the authorities cited, if the domestic tribunal has acted in a manner consonant with the ordinary principles of justice, this Court has no such jurisdiction, but the proceedings must have been conducted with fairness, and that is the question next to be examined. It is clear, on the evidence, that David Háim was given no previous notice that his conduct and his dismissal were to be discussed at the meeting which dismissed him from office. That was an omission I thought the Court ought not to rectify in the middle of the case, as it would have been impossible to ensure David Háim a fair hearing. Was he not entitled to such notice? Could he be dismissed by a surprise, behind his back, without any opportunity of making his defence, and explaining his conduct to his fellow-congregationalists? In two recent cases of dismissal of a member from a club—*Fisher* v. *Keane* (3) and *Labouchere* v. *Earl of Wharncliffe* (4)—it was laid down by Jessel, M.R., that a member of any voluntary society is entitled by the ordinary principles of justice, when charged with offences warranting expulsion, to fair and adequate notice and to an opportunity of meeting the accusations brought against him. The principle has also been applied in the case of a vicar whose benefice had been

(1) 2 Mac. & G., 216.
(2) L. R., 5 Eq., 63.
(3) L. R., 11 Ch. Div., 355.
(4) L. R., 13 Ch. Div., 346.

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sequestered by a bishop (*Bonaker* v. *Evans* [1]); and in the case of a Baptist minister dismissed by his community (*Dean* v. *Bennett* [2]), when Lord Hatherley, L.C., confirmed James, V.C.; who said," if a meeting was summoned for the purpose of bringing charges, those charges ought to have been communicated before the meeting was called, so that he might have an opportunity of knowing what he was to meet." See, also, *Queen* v. *Sadlers Co.* [3], where a man had been made a member of the governing body of a London Corporation, and dismissed without notice. The case is specially in point, as the holder of the office in question received no pay, and the office was only valuable as making the bearer eligible for posts where he would have a share in the management of the funds. Lord Westbury then said: "As he was legally admitted to the office without fraud, he could not be legally removed from it without being heard in his defence." In Comyn's Digest, Title Mandamus, D. 4, it is laid down that the return to a *mandamus* for restoration to an office is not good if it does not show that the party was summoned or heard on the matters objected against him. See, also, *Osgood* v. *Nelson* [4]. The only authority I can find on the other side is the *Queen* v. *Governors of Darlington School* [5], where a schoolmaster was dismissed without notice or hearing. But the decision turned on the point that the master only held his office *ad libitum*. That cannot be said in the present case. Even on the evidence of his adversaries, the post was held by David Háim, not merely at the will of the community, but as long as he duly performed the duties. It was argued that, by the custom of the community, special notice was not necessary as a condition precedent to dismissal. There have been two previous dismissals, and special notice was not proved in either case. But the acquiescence of the two persons then dismissed does not establish any custom, especially one in derogation of an elementary principle of justice. Moreover, at the time of those dismissals, the whole community was in harmony, whereas the present dismissal was effected in the midst of strife and schism, when every precaution ought to have

(1) 16 Q. B., 162.
(2) L. R., 6 Ch. Ap., 490.
(3) 10 H. L. Cases, 404.
(4) 5 H. L. at p. 636.
(5) 6 Q. B., 682.

been taken to obtain the true opinion of the congregation after hearing both sides. On the one hand, the choice of the first defendant was not irrevocable, and the community ought not to be forced to accept a head-man against their will who has exceeded his powers. On the other hand, he was entitled to be heard before he was dismissed. To use the words of Lord Hatherley in *Dean* v. *Bennett*(1), "the course taken here was utterly inconsistent with any notion of justice or propriety." I am of opinion, therefore, that the maxim of *audi alteram partem* is applicable to the case, and as it has been violated, I am bound to hold that David Háim has not yet been duly dismissed.

The second defendant stands in somewhat different relations to the community. He claims no family right to his office. He was appointed by the community. He was once either dismissed from his office, or he resigned in anticipation of dismissal. He had no vested right in his office. But his dismissal, if it took place, may have been after notice. No evidence was offered on that point, or as to the exact terms on which he held his office; and in the absence of such proof I think it more in accordance with fairness and natural equity to hold that he too was entitled to notice, and an opportunity of defending himself before dismissal. The third defendant stood in an entirely different position. He was merely a paid official of a subordinate character, and in his case I think the managers had the power of dismissal. All the managers, save the first and second defendants, concurred in dismissing him, and I think they were within their right in doing so. He must, therefore, be declared dismissed, and must give up possession of the premises he occupies in the synagogue. His right, at the most, would extend to a claim for a month's wages in lieu of notice if the dismissal was not justified by misconduct.

By the decision I have felt bound to come to, I do not mean in any way to compel the community to accept officers whom they are unwilling to acknowledge. They have the power—on my reading of the law and my conclusion on the facts as to the position of the defendants—to get rid of both of them through the agency of their domestic tribunal, when it has acted in a manner consonant with the general principles of justice. But the de-

(1) L. R., 6 Ch. Ap., 490.

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fendants have not been given an opportunity of defending themselves, and they are entitled to such an opportunity. If any voluntary society, such as this community, seeks the aid of the Court to enforce its decisions, it must first prove that it has proceeded in conformity with the ordinary principles of justice. Such proof has not been given in this case, and I must refuse the relief sought. At the same time I do not feel called upon to show any favour to the defendants. The conduct of the first defendant has been, in my opinion, blameworthy; and the second defendant must share the blame, as he has followed the lead of the first. In the refusal to bring in the money as agreed, on the restriction placed upon the use of the pots, in the posting of rules, in the closing of the synagogue, and in his action generally, I think the first defendant sought to usurp powers which belonged to the whole body of managers. In my duty to maintain the general principles of justice, I cannot grant the prayer of the plaintiffs. But the costs are in my discretion, and I feel justified in ordering the defendants to pay their own. The plaintiffs are entitled to the payment of any special costs caused by the defence of the third defendant.

Attorneys for the plaintiffs:—Messrs. *Payne, Gilbert, and Sayáni.*

Attorneys for the defendants:—Messrs. *Thákurdás, Dharamsi, and Dinshá.*