

We are of opinion, therefore, that no decree for possession as against defendants Nos. 12 to 18 can be made in favour of the plaintiff in this suit, and that he is only entitled to a declaration that the said defendants are only yearly and not permanent tenants. We must, therefore, reverse the decree, so far as it directs the defendants Nos. 12 to 18 to deliver possession to plaintiff, and direct that a declaration be inserted in the decree that the said defendants are only in possession of the land as yearly tenants. In other respects the decree is confirmed. Appellants to have their costs of this appeal.

1893
JAN. 23.
—
APPEL-
LATE
CIVIL.
—
18 B. 110.

Decree partially reversed.

18 B. 115.

[115] ORIGINAL CIVIL.

Before Mr. Justice Starling.

KANJI BAVLA (*Plaintiff*) v. ARJUN SHAMJI AND OTHERS
(*Defendants*). [10th August, 1893.]

Caste-matter—Custom of caste—Funeral ceremonies—Right to assistance of fellow-members of caste—Refusal to assist—Cause of action—Suit not maintainable.

The plaintiff, a Hindu and *kharva* by caste, alleged in his plaint that, pursuant to a usage of his caste, he, on the occasion of his child's death, called upon the defendants, who were his caste-fellows, to assist him in removing the dead body and performing caste ceremonies incidental thereto; that the defendants refused to do so, and induced other members of the caste to refuse also; that, in consequence thereof, the plaintiff was injured in his caste-status, and he prayed for a declaration that the defendants' acts were unlawful, and that he was lawfully entitled to exercise and enjoy all his customary caste-rights and privileges; and also for damages and for an injunction restraining the defendants from preventing other members of the caste from recognising him and treating him as a member of the caste.

Held, that the plaint disclosed no cause of action, and must be rejected.

[*Rel.* 26 B. 174 (152) = 3 Bom. L. R. 718.]

IN chambers. The plaintiff presented a plaint alleging that he was a member of the *kharva* caste of Hindus in Bombay; that it was a custom in the caste that, in case any death took place in the house of any member of the caste, such member was entitled to call upon his caste-fellows to assist him in the removal of the dead body to the burial-ground and to take part in performing the customary caste ceremonies connected with the funeral; that in January, 1893, his child died, and he called upon the defendants, two of whom were trustees of the caste, to aid him and take part in the customary performance of caste rites, but they maliciously and without any cause refused to do so, and induced others also to refuse, and that, in consequence thereof, the plaintiff suffered in his *status* and character as a member of the caste, and was treated as if he had been out-casted. He prayed for a declaration: (1) that the acts of the defendants were illegal, and contrary to the usages of the caste; (2) that he was still a member of his caste, and had done nothing to forfeit the rights and privileges of his caste, and was lawfully entitled in every respect to exercise and enjoy all his customary caste rights, and reciprocate the same to his fellow-castemen. He further prayed for damages and for an injunction restraining the defendants from

1893
AUG. 10,

ORIGINAL
CIVIL.

18 B. 115.

[116] preventing other members of the caste from recognising the plaintiff as a member of the caste.

On presentation of the plaint to the Judge in chambers (Starling, J.), objection was taken that it disclosed no cause of action. Subsequently counsel appeared to argue the point.

Vicaji, for the plaintiff:—The plaintiff complains that he has been treated as an out-caste by the defendants, who are fellow-members of his caste, without cause, and without enquiry, and out of malice. He sues, therefore, to have it declared that he has not lost caste, and that the defendants' acts are unjustifiable and contrary to the usages of the caste. Such a suit is one of a civil nature and cognisable by Courts of law. In the Mofussil of Bombay it would be governed by Regulation II of 1827, s. 21 (1). That enactment expressly provides for "the 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 the illegal act or unjustifiable conduct of the other party." The same Regulation declares that "no interference on the part of the Court in caste-questions is hereby warranted." The present suit is not a case of such interference; for *interference* has been held not to include cases in which "evidence of the customary law of a caste" is taken, or where the law of the caste has been recognised. The Courts are free to deal "with a caste-question where the membership and the character of a member have been unjustly injured"—*Pragji Kalan v. Govind Gopal* (2). The Madras High Court has held that "a question of caste-status in respect of a caste institution" is a right of "a civil nature and within the [117] cognisance of the Civil Courts"—*Venkatachalapati v. Subbarayadu* (3). Loss of caste was held so far back as 1867 to be a civil wrong in *Gopal Gurain v. Gurain* (4), which was a suit for restoration to caste and damages for the cost of such restoration. In *Souuram v. Obhoyram* (5) the Courts held a suit to gain re-admission to caste maintainable. These cases are distinguishable from suits of the class of *Raghunath v. Janardhan* (6) for the enforcement of sumptuary rights by plaintiffs to be invited to social entertainments.

Cur. adv. vult.

JUDGMENT.

STARLING, J.—In this case the plaintiff, who is a member of the *kharva* caste, in his plaint alleges that by a custom of the caste a member thereof, in whose family a death has taken place, is entitled to call upon the other members of the caste, apparently without limitation in number and without regard to their place of residence, to come to his house and

(1) Section 21, Regulation II of 1827:—

First—[The jurisdiction of the Civil Court shall extend to the cognisance 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. (See also Schedule to Act XIV of 1869).

(2) 11 B. 534.

(3) 13 M. 293.

(4) 7 W. R. 299.

(5) S. D. A. R. 1847, p. 106.

(6) 15 B. 599.

assist in the removal of the dead body to the burial-ground and to take part in performing the customary caste ceremonies incidental to the funeral. He further alleges that, on the 19th January, 1893, on the death of a child, then a few days old, the defendants—two trustees and three members of the caste—refused to assist him in removing the dead body, and induced others of the caste to refuse also, in consequence of which the plaintiff and his family have suffered in their *status* and character, as the treatment they have received is such as would be meted out to those who were out-casted. He then asks that it may be declared that the aforesaid acts of the defendants were illegal and contrary to the usages of the caste; that he may be declared to be lawfully entitled to exercise and enjoy all his customary caste rights; that the defendants may be restrained from preventing other members of the caste from recognising the plaintiff as a member of the caste, and for damages.

When the plaint was first presented to me I refused to admit it until I had heard the attorney on the record, or counsel on the point, whether the plaint disclosed any cause of action cognizable by the Civil Courts. Accordingly Mr. Vicaji appeared and argued [118] that point. He cited Regulation II of 1827, s. 21; *Pragji Kalan v. Govind Gopal* (1), which, however, involved a question of the right to caste property; *Gopal Gurain v. Gurain* (2), which was a suit for a declaration of the plaintiff's right to be restored to caste and for the cost of such restoration; and *Venkatachalapati v. Subbarayadu* (3), which was a suit for a declaration of the plaintiff's right to enter a certain portion of a *quasi*-public building, *viz.*, a Hindu temple. None of these cases seem to me to govern the present one, which, in my opinion, belongs to that class which has often been before the Courts, and in which relief has been constantly refused, *viz.*, where the plaintiff has sought a declaration that he is entitled to be invited to dinner with his fellow-castemen, and to insist upon their coming to dinner with him. I think this case is on all fours with that of *Sudharam v. Sudharam* (4), where the plaintiff had invited the defendants to a dinner party, which invitation they had accepted, but did not come. At the end of his judgment, Bayley, J., after citing *Joy Chunder v. Ramchurn* (5), said: "No decree can be executed declaring a person's right to the membership of a society, as the effect of such a decree would be to require that other persons do accept the plaintiff's invitation and do partake of his food though against their will, and that they in their turn must give him similar invitations and dine with him whether they like to do so or not." This case was cited and followed in *Raghunath v. Janardhan* (6), wherein the case of *Shankar v. Hanma* (7) was also cited. I think these cases and the majority of the older cases, collected and reported in 3 Beng. L. R. (A. J.) 91 show that the present suit is not maintainable, as the decree to be of any effect would have to declare that all members of the *kharva* caste whom the plaintiff chose to call to his house on the occasion of a death in his family, must go, whether they were willing or not; and that the defendants were never to state any reason to any of their fellow-members why they should not accept the plaintiff's invitations, and I fail to see how such a decree could be enforced.

[119] Consequently I shall follow the decision in *Sudharam v. Sudharam* (4). If the defendants are in fault at all it is because they

(1) 11 B. 534. (2) 7 W.R. 299. (3) 13 M. 293. (4) 3 B.L.R. (A.J.) 91.
 (5) 6 W.R.C.R. 325. (6) 15 B. 599. (7) 2 B. 470.

1893
AUG. 10.
ORIGINAL
CIVIL.
18 B. 115.

have broken some social rule of the caste, and in such a case it is to the caste the plaintiff must go for redress. There is no question of property involved, nor can I see that the defendants have by their alleged acts slandered the plaintiff so as to give him a right to sue for damages. I, therefore, reject the plaint.

Attorney for the plaintiff:—Mr. J. C. Cama.

18 B. 119.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

KATHIAWAR TRADING COMPANY, LIMITED, IN LIQUIDATION (*Original Plaintiffs*), *Appellants* v. VIRCHAND DIPCHAND (*Original Defendant*), *Respondent*.* [15th and 22nd September, 1893.]

Company—Directors of company—Liability of directors for funds of company applied in transactions ultra vires—Dealing in shares of other companies—Stale demand—Limitation—Limitation Act (XV of 1877), s. 10.

The plaintiff company was formed in 1864. By its memorandum of association its object was declared to be commission agency and general trading in cotton and also in goods and commodities suited for market in the interior of India. The memorandum contained the following words:—"If found desirable, the company may effect purchases of cotton and produce in Bombay and ship to England and carry on such local trade as may seem profitable." The company went into liquidation in 1867. In April, 1890, the present suit was filed against the defendant, who had been one of the directors of the company, and it was alleged that after the formation of the company the defendant and his co-directors had carried on speculative dealings in shares of other companies and had used the funds of the company for this purpose, which was not warranted by the memorandum of association. The plaintiffs alleged that their dealings, which were duly set forth in their plaint, had resulted in a heavy loss to the company, and they now sought to recover from the defendant the sum of Rs. 3,37,700-13-5. There had been originally five directors of the company, but at the date of suit two of them were dead and two had become insolvent. The plaint was filed in April, 1890.

Held (affirming the decision of Parsons, J.) (1) that the memorandum of association did not justify the directors of the company in dealing in shares of other companies, and that the transactions complained of by the plaintiffs were *ultra vires*.

(2) That the directors were liable to replace the moneys of the company which they had misapplied by applying them to a purpose which was *ultra vires*.

[120] (3) That s. 10 of the Limitation Act (XV of 1877) does not apply to directors of companies, the directors not being persons in whom the property of the company is vested as contemplated by that section.

(4) That in any case the staleness of the demand was a valid defence to the action, the liquidators of the company having had full knowledge of the facts since the company went into liquidation, but no suit was filed until the expiration of twenty-three years.

[R., 18 B. 401 (424).]

SUIT to recover Rs. 3,37,700 from the defendant, who had been a director of the company.

The company was duly registered as a limited company on the 23rd June, 1864, under Act XIX of 1857. Its capital was Rs. 12,50,000 divided into 125 shares of Rs. 10,000 each.