agree with the Division Court that the municipal authorities cannot be heard to say that their action was due to a mistake, when they must have known that plaintiff had appeared at any rate on the 28th, if not on the 21st April, and must be credited with the knowledge of what would be the effect of such appearance on the issue of the warrant.

It has been, however, contended before us that the defendant, the Municipal Commissioner, is not liable for the action of his subordinates in this matter, and the judgment of the Privy Council in this case of the *Bank of New South Wales* v. *Owston*(1) was relied on. Sir Montague Smith, who delivered the judgment of the Council in that case, states the result of the authorities to be that the authority of a special agent to arrest may be implied when the duties which the officer had to discharge could not be efficiently performed unless he had such power. Looking at the nature of the business which Mr. James' Department was entrusted with, it is plain it would be practically impossible to enforce the provisions of section 232 of the Municipal Act if one of the most ordinary steps in the proceedings against an offender before the Magistrate, *viz.*, the enforcing attendance by summons of arrest, required the express authority of the Commissioner.

For these reasons we are of opinion that the decree of the Division Court must be confirmed with costs.

Attorneys for the appellant (defendant No. 1):—Messrs. *Crawford, Burder and Company.*

Attorneys for the defendant (plaintiff):—Messrs. *Tyabji, Dáyábhái and Company.*

(1) 4 Ap. Ca, 270.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

LA'LJI SHA'MJI AND OTHERS (PLAINTIFFS), *v.* WA'LJI WARDHMA'N AND OTHERS (DEFENDANTS).*

1895.
Feb. 12, 18
19, 21.

Caste—Caste question—Regulation II of 1827, *Sec.* 21—*Jurisdiction of civil Court—Majority of caste, right of.*

The plaintiffs and defendants were members of the Kutchi Dossa Oswál caste of Hindus residing in Bombay. The plaintiffs alleged that by a resolution of the caste

* Suit No, 390 of 1894.

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unanimously passed at a caste meeting held on the 19th September, 1893, a committee, of which they were members, was appointed on behalf of the caste for the purpose of preventing Bráhmans from attending the feasts of the caste in the caste oart in Bombay, and that on the 16th and 18th July, 1894, by resolutions unanimously passed the members of the caste were strictly prohibited from feasting any Bráhman in the caste oart, and the committee was authorized not to allow any casteman wishing to feast Bráhmans in the oart to use the caste oart and caste vessels, and if necessary to take legal steps in the matter. The plaint alleged that the defendants proposed to give a feast in the caste oart to which they had invited Bráhmans, and prayed for an injunction and for a declaration that the above resolutions were validly passed and were binding upon the defendants and on the caste. The defendants contended that the subject-matter of the suit was a caste question and not cognizable by a civil Court, and further that the meetings referred to in the plaint had not been duly convened, and that the resolutions were invalid and not binding on those who were not present and who did not consent to them. They alleged that Bráhmans had from time immemorial as a matter of course attended the caste feasts, and they denied that the plaintiffs or any members of the caste had now a right to exclude them. The Court found as a fact that a large majority of the caste were in favour of excluding Bráhmans from caste feasts.

Held that the majority of the caste having arrived at a *bonâ fide* decision that the convenience and comfort of the caste were best advanced by the exclusion of the Bráhmans from their oart, it was not a case in which the Court could say that the decision was so subversive of the interests of the minority as to amount to a practical confiscation of their property or denial of their rights, and that the Court ought to give effect to it.

The Court accordingly passed a decree in terms of the prayer of the plaint prohibiting the defendants from bringing Bráhmans into the oart to dine so long as the resolution of the caste prohibiting the practice continued in force.

The Court does not decline to give effect to the expressed wishes of the majority of a caste as to the management and custody of caste property, which the minority seek to set at naught, by reason of the suit involving a caste question.

In matters relating to the management of caste property and the administration of its affairs the majority of the caste has authority to control the minority. But the Court will not by its decree enable the majority to make a tyrannical use of its power. It would not assist the majority to deprive without cause the minority of their right to use what is the common property of all, or give effect to a resolution passed in violation of the rules of natural justice or of a directly confiscatory nature.

SUIT to restrain the defendants from inviting Bráhmans to caste feasts or to other feasts held in the caste oart.

The plaintiffs and defendants were members of the Kutchi Dossa Oswál caste resident in Bombay. The plaintiffs (fifteen in number) were described in the plaint as members of a committee appointed by the said caste. The defendants were eight in number.

The plaint stated that the Kutchi Dossa Oswál caste was a Hindu Bania caste, of which about fifteen hundred adult male members resided in Bombay; that at a general meeting of the caste duly held on the 19th September, 1893, thirty-five members of the caste were, by resolution unanimously passed, appointed a committee on behalf of the caste for the purpose of preventing Bráhmans from attending the feasts of the caste in the caste oart in Bombay, and that fifteen of such committee should constitute a quorum; that at subsequent meetings held on the 26th November, 1893, the 23rd June, 1894, and 6th July, 1894, the number of the committee was increased from thirty-five to fifty-six, and the plaintiffs were fifteen members of the said committee of fifty-six persons.

On the 16th July, 1894, at a caste meeting at which about 1,000 adult members of the caste were present, and at another meeting on the 18th July, 1894, at which about 800 were present, the following resolutions were unanimously passed:—

"*IX.* The caste hereby confirm and re-appoint the committee of 56 gentlemen appointed on the 9th day of Bhádarwá Sud 1939, and in subsequent meeting, and also confirm all the business done by the said committee up to this day, and specially the meeting of this day called by Mr. Thackersay Dewráj.

"*X.* The castemen are hereby strictly prohibited from feasting any Bráhman in the caste oart, and the above committee are hereby fully authorized not to allow any casteman wishing to feast Bráhmans in the caste oart to use the caste oart and vessels belonging to the caste. If necessary, they are authorized to take legal steps in the matter."

The plaint, which was filed on the 9th August, 1894, alleged that since the passing of the said resolution two caste feasts had been given at the caste oart: one of them by one of the defendants and the other by one of their supporters, to both of which, notwithstanding the protests by the plaintiffs, many Bráhmans and their families were invited and came. The plaint then continued:—

"The plaintiffs and the majority of the caste who are entitled as of right to attend all caste feasts given at the caste oart strongly object to Bráhmans and members of other castes being invited to and attending the feasts there, and they will not attend any feasts to which Bráhmans are invited. The plaintiffs say that the majority of the caste are entitled to pass the resolution aforesaid against Bráhmans being invited to caste feasts or feasted in the caste oart, and that a small minority of the caste cannot use the caste property in violation of the rule aforesaid.

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"10. The caste oart and the caste pots, utensils, dishes and benches used for the caste feasts are all the exclusive property of the said caste, and the plaintiffs say that no one not belonging to the caste is entitled to use them against the wishes of the majority of the caste.

"11. When the Bráhmans attend the caste feasts abovementioned they use the cooking pots, utensils, dishes and benches belonging to the said caste, and when they are invited they attend with their wives and families to the number of about 800 or 900. This altogether prevents the wives and families of the majority of the said caste from being conveniently accommodated at such caste feasts.

12. The plaintiffs have quite recently come to know that the defendants have arranged to give a caste feast in the caste oart at 2 o'clock next Friday, the 10th instant, and notwithstanding the above resolutions they have invited and intend to invite Bráhmans to attend the said caste feast, and they intend to feast Bráhmans in the said caste oart on the 10th instant and intend to allow the Bráhmans to use the said caste oart and other caste property aforesaid.

"13. The plaintiffs further say that Friday the 10th instant corresponds with the native date 9th Shrávan Sud, and that the feast which is to be given on that day will be given under the provisions of clause 15 of the consent decree passed in Suit No. 488 of 1888, dated the 2nd August, 1890.

"14. The said clause 15 of the said decree only provides for the giving of a feast to the Kutchi Dossa Oswál Vánia caste and to priests, and does not permit Bráhmans being invited to attend the feast. The priests are not Brahmans but Gurjis, and do not join the caste in their feasts, but take away their food with them.

"15. The plaintiffs say that the action taken on the part of the defendants above referred to will, unless they are restrained by injunction of this Honourable Court, prevent the plaintiffs and the majority of the caste from attending the said feast."

The plaint then prayed for an injunction restraining the defendants from attending the said caste feast to be given at the caste oart on the 10th August, 1894, and from feasting any Bráhmans in the said oart, and from allowing Bráhmans to use any portion of the oart or other property of the caste, or from inviting Bráhmans to attend any other feast at the said oart, &c., and further for a declaration that the above resolutions were validly passed and they bound the caste and restraining the defendants from acting contrary to them.

The defendants filed a written statement, in which they submitted that the subject-matter of the suit was a caste question and not cognizable by a civil Court. They further contended that the meetings referred to in the plaint had not been duly convened and that the resolutions were invalid and not binding on those who were not present and who did not consent to them.

They denied that the plaintiffs were authorized or entitled to bring the suit. They alleged that Bráhmans had from time immemorial as a matter of course attended the caste feasts, and they denied that the plaintiffs or any members of the caste had a right now to exclude them: that the Bráhmans were absolutely necessary to the caste and had always performed ceremonies in connection with marriages, &c., for members of the said caste, and that if now excluded the members of the caste would lose religious benefit of their services. They further claimed that any member of the caste had a right (subject only to his obtaining the consent of one Abhechand Rághowji, the principal member of the original donor's family) to the use of the caste oart and vessels both for general and for private feasts and had the right to invite Bráhmans to such feasts.

The written statement contained the following paragraph :—

"The defendants admit that Bráhmans were invited to and attended the feasts therein referred to as they have always done. The defendants say that the said Bráhmans are so invited to their feasts from religious motives, and that there is a vested right in every member of the said caste so to invite the said Bráhmans, and that no majority of the said caste is entitled to interfere with the same whether by resolutions or otherwise."

Macpherson (*Inverarity* with him) for the plaintiffs:—The members of this caste are Banias and follow the Jain religion. The caste came from Márwár to Cutch 300 years ago. From thence they went to Jámnagar, and 60 or 70 years ago a few members came to Bombay. As to the history of the caste see *Thackersey Dewráj* v. *Hurbhum Nursey*[1]. As to the Jain religion see *Bhagvándás* v. *Rájmal*[2].

The questions raised are no doubt in a sense caste questions, but they do not come within the Regulations, and the jurisdiction of the Court is not excluded. The Court is not precluded from recognising and enforcing the decisions of the caste in matters relating to caste property. In reference to such matters what constitutes the caste? Clearly the majority of its members. The vote of the majority is the vote of the caste. The recalcitrant minority are not the caste. Here it is really the minority who invoke the assistance of the Court to override the will of the caste.

(1) I. L. R., 8 Bom., 444.

(2) 10 Bom., H. C. Rep., 241.

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The Court cannot do this, but will give effect to the decision of the caste, *i. e.* the decision of the majority. The caste is an autonomous body, and when it comes to a decision which creates rights with regard to property, the Court will enforce these rights. A question finally decided by a majority of the caste cannot be said to be a caste question of the class which is withdrawn from the jurisdiction of the civil Court—*Girdhar* v. *Kályá*(1); *Mehtá Jethálál* v. *Jamiatrám*(2); *A'nandráv* v. *Shankar*(3); *Dullabh* v. *Nárávan*(4); *Krishnásámi* v. *Virasámi*(5); Civil Procedure Code (XIV of 1882), section 11; Strange's Hindu Law (3rd Ed.), p. 93. As to the user of caste property—*Prágji Kalan* v. *Govind Gopál*(6); *Advocate General* v. *David Haim*(7); *Jagannáth Churn* v. *Akali Dassia*(8); *Raghunáth* v. *Janárdhan*(9); *Dawkins* v. *Antrobus*(10); *Hopkinson* v. *Marquis of Exeter*(11); Suit No. 168 of 1879 (unreported) and No. 367 of 1879 (unreported); *Thackersay Dewráj* v. *Hurbhum Nursey*(12); *Cooper* v. *Gordon*(13). As to the frame of the suit—*A'nandráv* v. *Shankar*(14); Lewin on Trusts (9th Ed.), p. 1059; Civil Procedure Code (XIV of 1882), section 532. The caste can prescribe its own usages—*Attorney General* v. *Guild*(15). The oart is charitable property—*Commissioners of Income Tax* v. *Pemsel*(16).

Lang (Advocate General), *Lowndes* with him, for the defendants:—The authorities clearly show that the questions raised here are caste questions. The fact that the right to property may be involved does not give the Court jurisdiction—*Girdhar* v *Kályá*(17); *Mehtá Jethálál* v. *Jamiatrám*(18); *Prágji Kalan* v. *Govind Gopál*(19); *Advocate General* v. *David Haim*(20). The Court cannot interfere in disputes about the division of caste property. The cases in which this Court has held that it has jurisdiction were cases in

(1) I. L. R., 5 Bom., 83.
(2) I. L. R., 12 Bom., 225.
(3) I. L. R., 7 Bom., 323, at p. 329.
(4) 4 Bom. H. C. Rep., 110 (A. C. J.).
(5) I. L. R., 10 Mad., 133.
(6) I. L. R., 11 Bom., 534.
(7) *Ibid.*, 185, at p. 195.
(8) I. L. R., 21 Calc., 463.
(9) I. L. R., 15 Bom., 599, at p. 610.
(10) 17 Ch. D., 615.
(11) L. R. 5 Eq., 63.
(12) I. L. R., 8 Bom., at p. 472.
(13) L. R. 8 Eq., 249.
(14) I. L. R., 7 Bom., at p. 328.
(15) 28 Beav., 485.
(16) (1891) Ap. Ca., 531, at p. 583.
(17) I. L. R., 5 Bom., 83.
(18) I. L. R., 12 Bom., 225.
(19) I. L. R., 11 Bom., 534.
(20) *Ibid.*, 185.

which the question was as to who should hold the property for the whole caste. It has interfered to protect the property for the caste. See also *Krishnásámi* v. *Virasámi*(1). This suit relates to charity—*Goodman* v. *Mayor of Saltash*(2); *Attorney General* v. *Lawes*(3); *Gray* v. *Chaplin*(4). The majority cannot divert a charity from the purpose for which it was intended. When this oart was given to the caste it was the practice for Bráhmans to attend the caste feasts. The intention of the donor must be assumed to have regard to the caste practice prevailing at the time of gift. The feasting of Bráhmans is meritorious—*Lakshmishankar* v. *Vaijnáth*(5); *Advocate General* v. *Vishvanáth*(6). The majority cannot change the practice contrary to the intention of the founder—*Attorney General* v. *Pearson*(7); *Attorney General* v. *Shore*(8). They also cited *Gopál* v. *Gurain*(9).

FARRAN, J.:—The parties to this suit belong to the Kutchi Dossa Oswál caste. The plaintiffs, who allege that they represent a majority of the caste, have, with the permission of the Court, brought the suit under section 30 of the Civil Procedure Code (XIV of 1882) on behalf of all parties interested, including themselves. The main prayer of the plaint is that the defendants, who are eight in number, may be restrained by injunction from inviting any Bráhmans to attend a particular feast which was to have been held on a day now past, and any other feast given at the caste oart to the caste, and from inviting any Bráhmans into the caste oart at any time that a caste feast is being given or otherwise.

Although the evidence which I have recorded in the case occupies many pages of my note book, and the recording of it has taken a considerable time, the facts actually proved may be condensed into a narrow compass. It will be convenient to state them concisely before considering whether the plaintiffs are entitled to, and the Court has jurisdiction, according to the principles which govern its practice, to afford to them the relief which they pray by their plaint.

(1) I. L. R., 10 Mad., 133.
(2) 7 Ap. Ca. at p. 642.
(3) 8 Hare, 32, 41.
(4) 2 Sim. and St., 267.
(5) I. L. R., 6 Bom., 24.
(6) 1 Bom. H. C. Rep., at p. 17, App.
(7) 7 Sim., 290, 306.
(8) *Ibid.*, p. 309.
(9) 7 Cal. W. R., 299.

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LA'LJI SHAMJI v. WA'LJI WARDHMA'N.

The Dossa Oswál caste are Jains by religion, though not of the most orthodox kind. The caste originally settled in Márwár, migrated thence about 300 years ago to Cutch, where they are now a numerous body. Thence a portion of them came to Bombay about 80 years ago. This suit concerns only the Bombay section and its property. That section consists now of from 1,400 to 1,500 adult males. When assembled at a caste feast the persons dining number about 2,500 or 2,700, including women and children.

When the caste came to Bombay they had no máhájanwádi, and for some time were without definite rules. Their caste dinners took place in a warehouse of Narsi Nátha or in some vacant convenient building. Narsi Nátha was the headman or shettia of the caste and was also the banker of its funds as well as of the funds of the temple which was built in his time. His representative for the time being is still recognised as the principal shettia of the caste. He signs in the name of Narsi Nátha in caste matters. Narsi Nátha died in 1842. His firm of Narsi Nátha and Company devolved upon his son Virji Narsi. The present máhájanwádi and building which are at Khadak were purchased and built in Virji's time. It has hitherto been an accepted belief in the caste that Virji Narsi purchased and built the máhájanwádi and presented it to the caste. It was so stated by Kessowji Náik and the other headmen of the caste in 1869 in their written statement in Suit No. 298 of 1869, a suit in which the Karad caste sought to share the property of the Dossa Osswáls and it was repeated in the written statement in Suit No. 424 of 1881. No one in fact thought of questioning the belief until lately. An examination of the books of the firm of Narsi Nátha and Company has now unearthed a document (Exhibit A) which throws doubt upon the accuracy of this general belief. It is a release given by Virji to Bhármal Tejsi and two other men who had been managing the firm of Narsi Nátha and Company for him during his minority. It acknowledges that he (Virji) held two houses and a sum of Rs. 51,000 in trust for certain charitable purposes of which Bhármal Tejsi and the others were to have the management, and then deals with the acquisition of the máhájanwádi as follows:—"Further the house or *chál* on

Khadak (road) which was purchased in my name from Memon Dáwudbhai Ahmed for Rs. 15,000 has been purchased for the máhájan. On the same the work of repairing and rebuilding having been made (the same) is to be made over to the máhájan and the expense which may have to be incurred and the outlays that may be made in getting the same rebuilt are all duly to be paid by me. And the said *chál* having been turned into a máhájanwádi and a new deed having been got made in the name of Sháh Narsi Nátha, the same is to be given to the máhájan as a present for the purpose of giving feasts and dinners. And in the books of Sháh Narsi Nátha there is an account of the máhájan. In that account Rs.....are found to be due to the máhájan. The same are to be debited to the account of the máhájan on the 30 of A'sso Vad Samvat 1903 (8th November, 1847), and the account is to be kept as squared. No balance is to be struck in the máhájan's accounts as claimable or payable up to 30th A'sso Vad Samvat 1903. And the deed relating to the same wádi having been got made in the name of Sháh Narsi Nátha and the said house having been turned into a máhájanwádi, the same is duly to be made over into the possession of the máhájan. The authority over the same belongs to the mukhtyárs of the Bombay máhájan of our caste and the deed relating to the said wádi is to be kept by you. I am not to raise any objection or claim against the same." This document is dated 17th November, 1847.

Previously to this a subscription list had been started in the caste for the purpose of an oart, and Rs. 15,784½ had been subscribed by 454 members. The evidence, I think, shows pretty conclusively that the subscriptions were never called up. The subscribers grumbled and Virji Narsi undertook to make up the amount. It was certainly intended that the funds of the caste then in the hands of Narsi Nátha and Company available for the purpose should be employed in making the purchase, but the fact of the subscription being got up shows that they were considered insufficient for the purpose. The wádi and building cost from Rs. 35,000 to 40,000. A good deal of inconclusive evidence has been given to show what available fund Narsi Nátha and Company then held, and how the blank left in Exhibit A should

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be filled up. The books of Narsi Nátha and Company are not forthcoming. The temple books do not show the expenditure (if any) made by Narsi Nátha and Company, but only the sums paid over to the firm. Ghelábhai Padamsi states that the money of the máhájan which Narsi Nátha and Company had in hands was Rs. 2,700; but in the absence of books I cannot accept this sum even as the approximate amount. Nothing has been proved. Exhibit XXIII is not a reliable document. Its non-production in the earlier suits (Exhibits A 8, A 9 and A 10) renders it impossible to attach any real weight to it. The last document on this subject is Exhibit 7 passed by Harbhum Narsi after the death of Virji to Bhármal Tejsi and two others. It refers to the máhájanwádi thus:—"There is one máhájanwádi at Khadak. That oart has been built and given away as a present to the máhájan for giving feasts. The same has been given to our caste by my deceased brother Virji Narsi for being used as a feasting and feeding place; thereto I and my heirs have no claim whatever."

The inference which I draw from the several documents and the other evidence in the case in connection with the acquisition of the máhájanwádi are these:—The caste purposed to purchase a wádi for feasting purposes out of their surplus funds in the hands of Narsi Nátha and Company supplemented by subscriptions; the managers of Narsi Nátha and Company purchased a suitable place during the minority of Virji Narsi intending to pay for it eventually out of such funds; and Virji when he came of age and took over the estate undertook not to call in the subscriptions, but to make up any deficiency, beyond the fund in the hands of his firm, out of his own resources, thus squaring the account between his firm and the estate. In that sense he was treated or treated himself as bestowing the oart on the caste; but legally his firm purchased the oart as the agents for the caste, advancing money for the purpose, and he gave up his claim for repayment by the caste beyond the sum which he had in his hands belonging to the caste. The amount of that sum cannot now be determined with certainty.

Under these circumstances it is, I think, impossible to treat the acquisition of the oart otherwise than as a purchase by the caste for the purpose of using it as a caste-feasting oart, or to consider the oart as having any trust impressed upon it by Virji Nátha to use it in a particular manner, because he at the *vastu* ceremony and subsequently in common with other numbers of the caste, feasted Bráhmans in it along with the caste. It is in the same position, I think, as if the caste had purchased the oart by subscription for a feasting oart, Virji Narsi being the largest contributor to the purchase-money. Since its acquisition by the caste the oart has always been used as a caste feasting place, and is still used as such. Virji and Hurbhum Narsi were in the habit of levying a small fee when a casteman used the oart. This was probably for the cleansing of the oart, and keeping its floor in order. The practice ceased in Samvat 1912 or 1913. No inference can, I think, be drawn from this circumstance. Though it is necessary for a casteman wishing to use the oart for the giving of a caste feast to ask formal permission to do so from the shettias of the caste or, according to Nursi Kessowji, from a máhájan meeting, I think it is clear from the evidence that upon payment of the customary fee to the caste funds, each casteman, in the absence of any special reason, is entitled to the use of the oart for such purpose. The regulation of the permission rests with the shettias of the caste or the caste, and not with the representive of Narsi Nátha alone. Exhibit A, coupled with the other evidence, is conclusive upon this point. The oart is supplied with cooking utensils which have been purchased out of caste funds. They are used similarly by the members of the caste, also on payment of a small fee, for cooking caste dinners in the oart. They are also similarly used for cooking less important feasts given by the members not in the caste oart.

Though the Dossa Oswál caste follow the Jain religion in matters of doctrine and faith, they have not abandoned all Vishnu ceremonies and practices. Their marriage ceremonies, *agarni*, and birth ceremonies and certain ceremonies after death are performed by, or in the presence of, Bráhmans. From time immemorial—long before the caste came to Bombay—a sect or

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class of Bráhmans called Rájgur Bráhmans have been closely connected with the caste and have performed these ceremonies for them. The defendants admit that such ceremonies are of a mundane and not of a religious nature. Shobhan Aspal explains them in detail. The origin of the connection between the Rájgur Bráhmans and the Dossa Oswáls has not been traced. A legend, invented probably by the former, ascribes it to the Rájgurs having degraded themselves by eating with the Dossa Oswáls who are Banias to save the latter from slaughter by Mussalmáns. The connection has been beyond doubt very remote. In consequence of this connection or from some other unknown cause these Rájgur Bráhmans have been in the habit from very early times of dining with the caste at caste and other feasts. Some Rájgur Bráhman families followed the Bombay section of the caste to Bombay and since then they have been accustomed to dine with the Dossa Oswáls at their caste and other feasts in addition to performing for them the Vishnu ceremonies which I have mentioned. Since the acquisition of the caste oart they have always dined in it at the caste feasts. Formerly they came to feast by invitation. Exhibit B is a document passed by the Rájgur Bráhmans in 1839 undertaking not to attend feasts unless invited. This undertaking was not adhered to, and the Bráhmans attended all feasts in the oart whether invited or not. The plaintiffs say that this has for a long time been submitted to, but grumblingly, by a large number of the caste.

In Samvat 1949 this grumbling ripened into action. Under the guidance of the plaintiff Narsi Kessowji and others the section of the caste opposed to the feasting of the Rájgur Bráhmans began to hold meetings and appoint committees to get rid of the practice. The movement began with a petition addressed to the caste leaders. On the 18th of September, 1893, a committee of 35 was appointed to take steps in the matter. Further meetings were held on 19th September and on 18th November, 1893. On the 23rd June, 1894, the committee was enlarged. On the 6th July it was resolved to engage barristers. The opponents of the Bráhmans now found themselves strong enough to take a decisive step and called a caste meeting in the máhájan-

wádi for the 16th July. The published notice of this meeting stated that the object was to consider certain accounts and trust matters. A large number of the castemen assembled, probably 900 to 1,000. The evidence of Mr. Morris and Exhibits 29 to 32 do not throw any real doubt over this figure or those relating to the next meeting. The advertised objects of the meeting having been disposed of, it was proposed, seconded and carried unanimously, that the castemen should be strictly prohibited from feasting Bráhmans in the máhájanwádi, and that legal measures should be taken, if necessary, to prevent a casteman from feasting even a single Bráhman in the máhájanwádi, or using the máhájanwádi and the pots and vessels.

At the date of this meeting another meeting had been formally convened by Abbechand Rághowji, the leader of the Rájgur Bráhman faction, for the 18th July. The chairman called the attention of the meeting of the 16th to that fact and took their sense as to whether they should attend the meeting of the 18th. The meeting resolved to attend it. The result of this meeting of the 16th quickly became known, and on the 17th there was great excitement in the caste. The rival party purported to put off their meeting of the 18th by public notices, but Narsi Kessowji and the anti-Bráhmanites, notwithstanding such notices, attended it to the number of about 800. The resolutions passed at the meeting of the 16th July were all read out and confirmed at this meeting unanimously. The feeling of the minority of the caste appears to be not to attend a meeting at which they are sure to be outvoted.

The present leaders of the caste are four—Narsi Kessowji and Cuverji Jewráj, who desire to exclude Rájgur Bráhmans from their feasts and caste oart and have followers to the number of about 1,000; and Abhechand Rághowji (who signs Narsi Natha) and Ghellábhai Padamsi, who favour the admission of Bráhmans and desire to invite them, and feast them at feasts given by themselves and who have followers to the number of about 350. The latter party now only desire that it shall be optional with the castemen whether to invite Bráhmans or not. The defendants having been about to give a feast in the oart as usual

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on the 10th August, 1894, in accordance with the provisions of a certain trust-deed for feeding the caste, and proposing, as usual, to allow the Rájgur Bráhmans to attend, the present suit was filed on the 9th August, 1894, to prevent their doing so, and generally in the future to restrain them from inviting Bráhmans.

Since the suit the plaintiffs have convened and held another meeting of the caste on the 3rd November. Full notice of the business to be transacted at this meeting was published. At it the resolutions of the meeting of the 18th July were unanimously confirmed. About 903 members attended that meeting. It is, I think, beyond doubt that the plaintiffs command a large majority of the votes of the caste in favour of the resolution for excluding Bráhmans from the feasts and prohibiting the castemen from feasting them in the oart, at least in the proportion of 2 to 1. The defendants do not contest this fact, though they do not admit that the voting represents the real opinion of the caste.

These are the facts. I have now to consider whether upon them the plaintiffs are entitled to a decree. The first point which arises for consideration is whether the Court is prevented from giving redress to the plaintiffs by reason that the question at issue is a caste question, which the Court is precluded from trying. For the purpose of considering that point I must assume that the majority of the caste had power to regulate the use of the máhájanwádi in the way that they have done, and that the defendants desire to use it in an unauthorized manner.

In Suit No. 168 of 1879 Vásudev Vithoba and others suing on behalf of themselves and the majority of the caste sought to remove the defendant Hariba from the management of the caste property. The defendant alleged that he had been duly appointed by the caste to manage, and that the caste were still in favour of his continuing to manage. The Court (Sargent, J.) directed a caste meeting to be held and, it being found that the majority of the caste—176 to 117—were in favour of removing the defendant from the management, passed a decree directing the defendant to deliver to the plaintiffs possession of the immoveable and moveable property of the caste and restrain-

ed him from performing or interfering in the performance of certain ceremonies unless and until he was duly elected a member of the panch of the caste.

In Suit No. 367 of 1879, Gopáldás Mádhawdás, alleging himself to be shettia of the Kápole Bania caste, sued Sir Mangaldás Nathubhai to recover possession of certain utensils and cooking pots of the caste which the defendant had taken forcible possession of. The defendant claimed to retain them by virtue of the authority given him by the caste. It being found that the majority of the caste were in favour of the defendant having the custody of the articles, the plaintiff's suit was dismissed by Kemball, J. Sir Mangaldás, as elected headman of the caste, also filed a suit (No. 290 of 1880) to recover from Gopáldás possession of some of the caste property. Sir Charles Sargent passed a decree in the plaintiff's favour on the ground that he had been appointed shett of the caste by a majority, and was entitled, therefore, to have the custody of the caste property.

These unreported cases show that this Court does not decline to give effect to the expressed wishes of the majority of a caste as to the management and custody of caste property which the minority seek to set at naught by reason of the suit involving a caste-question.

The Advocate General for the defendants relied upon *Girdhar* v. *Kályá*[1] which followed the Full Bench ruling in *Nemchand* v. *Savaichand*[2]. That was a decision that a dispute which had arisen with reference to certain property was a caste-question within the meaning of Regulation II of 1827, section 21, which provides that it is to be "understood that no interference on the part of the Court in caste-questions is warranted" by the wording of the section which gave the Courts general jurisdiction over all suits and complaints of a civil nature. The wording of this proviso has given rise to many questions of a delicate nature, and fine distinctions have been drawn as to what are and what are not caste-questions, and what does and what does not amount to an interference in such matters within the meaning of the section. The decisions, it must be admitted, are not easily re-

(1) I. L. R., 5 Bom., 83. (2) *Idem*, 84, note.

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concileable with one another. The principal of them are mentioned in the foot-note (1).

The test which ought to be applied is, I think, that applied by Sargent, C. J., in *Murári* v. *Suba*(2), *viz.*, "would the taking cognisance of the matter in dispute be an interference with the autonomy of the caste?" Will the Court be deciding a question which the caste as a self-ogverning body is entitled to decide for itself? If that be the true principle upon which the cases were decided, it follows, as remarked by West, J., in *Prágji* v. *Govind*(3) that "to take evidence of the customary law of a caste, to recognise that law and the vote of a majority as given effect to by that law, is not to interfere in caste matters. It is simply to recognise the existence of castes as corporations with civil rights and autonomy suitable to the purposes of their existence." In that view, upon the assumption which I have stated, it would not be an interference in a caste question to uphold by the sanction of the Court's decree the right of the majority of the caste in question to regulate the user of the caste oart and to restrain the recalcitrant minority from acting in opposition to a regulation laid down by the majority as to such user. If the decisions to which I have referred passed under the Regulation of 1827 go further than this, and prohibit the civil Courts altogether from dealing with questions in which caste interests are involved, I consider that sitting on the Original Side of the High Court to which the Regulation does not extend, I should not be bound to follow them, but should rather follow the unreported Original Side decisions which I have mentioned. I must, therefore, disallow the plea raised by the defendants to the jurisdiction.

It is clear upon the authorities that in matters relating to management of caste property and the administration of its affairs the majority of the caste has authority to control the

(1) *Dullabh Jogi* v. *Náráyan* (4 Bom. H. C. R., 110); *Murár Dáya* v. *Nagria* (6 Bom. H. C. R., 17 A.C.J.); *Girdhar* v. *Kalya* (I. L. R., 5 Bom., 83); *Nemchand* v. *Savaichand* (I. L. R., 5 Bom., 84, note); *Shankara* v. *Hanma* (I. L. R., 2 Bom., 470); *Prágji* v. *Govind* (I. L. R., 11 Bom., 534); *Mehta Jethálál* v. *Jamiatrám* (I. L. R., 12 Bom., 225).

(2) I. L. R., 6 Bom., 725. (3) I. L. R., 11 Bom., 534.

minority. On this question it is sufficient to refer to the same unreported cases and to *Lálsoonder* v. *Sumbhoo*[1], *Mootee* v. *Kuhándás*[2], *Prágji* v. *Govind*[3], *Raghunáth* v. *Janárdhan*[4]. References could be multiplied. But in the absence of a written or proved customary constitution I know not how the affairs of a caste could be administered if the decision of the majority duly arrived at and notified were not held binding upon the minority—*Cooper* v. *Gordon*[5]. The proposition, in my opinion, amounts to little less than a legal axiom. This leads me to consider whether the resolutions in this case were duly arrived at and made known. The several meetings which preceded the meeting of the 16th July were of a preliminary character. They were attended only by the adherents of the movement, and were no doubt intended only to be so attended, though they professed to be caste meetings. As already stated, the notice convening the meeting of the 16th July did not mention the Bráhman question. The minority of the caste protested against the manner in which the meeting was convened, and there was a legal correspondence upon this subject. Ghelábhái Padamsi says that he and his party did not know that the Bráhman question was to be discussed at the meeting of the 16th. As this is quite possible, I think that the minority are entitled to contend that the resolution as to Bráhmans passed at that meeting was not duly arrived at. It cannot, however, I think, be said that the caste did not as a body know that the Bráhman question would be discussed and a vote taken upon it at the meeting of the 18th July. That meeting had been summoned by Abhchand Rághowji for that day. On the 17th, however, there was great excitement in the caste when the purport of the resolution passed at the meeting of the 16th July became known, and I feel assured that Abhchand tried to put off the meeting of the 18th because he knew that the same vote would be taken at it as had been taken on the 16th, and that he and his followers purposely refrained from attending it, knowing that they were in a minority. It appears

(1) 1 Borr., 419.

(2) *Ibid.*, 121.

(3) I. L. R., 11 Bom., 534.

(4) I. L. R., 15 Bom., 610.

(5) L. R., 8 Eq., 249.

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from the evidence of Narsi Kessowji, who on this point has not been contradicted, that notice of the actual business to be transacted at a meeting of this caste is not usually given before the meeting: but when there is a burning question to be decided, the object of the meeting naturally becomes known beforehand. The notice convening the meeting of the 18th did certainly specify particular business to be transacted at it; but this did not preclude the transaction of other business, nor did it in this instance mislead the caste who, I am satisfied, knew why the meeting was attempted to be postponed and why notwithstanding such notice it was actually to be held. The letter of Little and Company of the 18th July on behalf of Abhechand and his followers shows this very clearly and so do the proceedings at the meeting itself. It is sought to get rid of the effect of the resolution passed on the 18th of July by showing that the meeting was misled by the speeches of Narsi Kessowji and Bhármal Ruttonsi into voting for a resolution of which they did not understand the real import. I think, however, that this was not so. The terms of the resolution were certainly read to the meeting, and there is no real evidence to show that they were not fully understood. By the 3rd of November their full import was certainly known and they were then unanimously approved. If it served any useful purpose it might be possible to hold that there were technical objections to the validity of the resolution of the 18th July, but as the proceedings of the caste are not governed by technical rules and as the resolutions express the wishes of the majority of the caste, and as the minority could have opposed the passing of them if so minded, and would, I doubt not, have done so had they thought that they could have done so successfully, I think that I ought to have regard to substance rather than to technicality in this case and hold that the resolutions were duly arrived at by the caste and promulgated.

The main difficulty which I have felt throughout the case is to determine whether the resolution to exclude Bráhmans from the caste oart is really a question of the mere management of the caste property; and whether it is not rather a tyrannical use of their power by the majority which in effect deprives the minority of their right to use the oart because they entertain views upon

the subject of the Bráhmans different from those of Narsi Kessowji and his school. The Court would not, I apprehend, assist the majority by its decree to deprive without cause the minority of their right to use what is the common property of all. It would not, I apprehend, give effect to a resolution passed in violation of the rules of natural justice or of a directly confiscatory nature—*Jaganáth* v. *Akali*[1]; *Krishnasámi* v. *Virasámi*[2], *Dawkins* v. *Antrobus*[3].

The contention on the part of the defendant, is that many, perhaps most, of the feasts given in the oart, and particularly the *Swámi Vasthal* feasts are given from a religious motive, the giving of which benefits the soul of the donor in a future state; and it cannot be doubted that the giving of such feasts is inculcated as a primary duty upon followers of the Jain religion. The defendants go a step further and say that the religious efficacy of such feasts is increased if Bráhmans are allowed to partake of them. The Jain works of religious authority which have been put in at the hearing and the evidence of the Gorip Nye Saghur show, I think, that there is nothing in the Jain religion which forbids the feasting of Bráhmans, but that the feeding of them, as well as of others, is meritorious, provided that they do not observe practices contrary to the tenets of the Jains. It seems, however, that it is rather because they need food than because they are Bráhmans, that the feeding of them is set before the Jains as meritorious. In Exhibit 17 they are classed with the poor generally. The Jain writers do not regard Bráhmans as a body with any particular respect. The practice of the Dossa Oswál caste has been, as I have said, to allow Rájgur Bráhmans to partake of their feasts. Exhibit B shows that the practice has prevailed rather on account of the persistence of the Rájgurs than from the anxiety of the Dossa Oswáls for their presence. The further exhibits on this part of the case all tend to show that the Dossa Oswáls have been constantly protecting themselves against the encroachments of the Rájgurs, both collective and individual, and regulating their claims and privileges.

(1) I. L. R., 21 Calc., 463. (2) I. L. R., 10 Mad., 133.

(3) 17 Ch. D., 615.

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Ghelábhái Padamsi and several witnesses for the defendants say that they consider the efficacy of the feasts increased by the presence of the Rájgur Bráhmans. They do not, however, allege that the feasts cannot be held without their presence, but they appear to be honestly averse to holding the feasts without them.

The plaintiffs equally honestly and earnestly desire to exclude them on the following grounds :—

(1) That it is superstitious and contrary to the doctrines of the Jain religion to think that religious feasts gain any further merit from the presence of Bráhmans, and they think on religious grounds that Bráhmans should not be allowed to partake of them.

(2) That they prefer not to have Rájgur Bráhmans, who are not particularly clean in their persons, and are alleged not to behave with proper decorum at the dinners, sitting amongst them as members of the caste, and being the unwitting means of introducing people of other castes surreptitiously to the dinners. A caste feast, they say, should be strictly confined to the caste.

(3) That the Bráhmans feasting leaves too little room for the caste themselves and crowd their women when dining.

(4) That the feeding of them is an intolerable burden on the poorer members of their community and a tax upon all.

The first objection is probably confined to the leaders and men of advanced views. The masses do not appear to share them. The last objection appeals most to the feelings and pockets of the mass, though they probably join with the leaders in the 2nd and 3rd objections. These latter, though exaggerated, are of some importance (see Exhibit J). Balancing the considerations which press themselves upon me on each side of the question and conscious that there is much weight in the defendants' contention, I have nevertheless come to the conclusion that the majority of the caste having arrived at a *bonâ fide* decision that the convenience and comfort of the caste are best advanced by the exclusion of the Bráhmans from their oart, it is not a case in which the Court can say that the decision is so subversive of the interests of the minority as to amount to a practical confiscation of their property or denial of their rights, and that the Court ought to give effect

to it. I am much influenced in coming to that conclusion by the knowledge that the Vissi Oswál caste has arrived at practically the same result without the aid of a costly and protracted law suit.

I do not think that there is any objection to the plaint on the ground of misjoinder. One relief only is sought against the defendants whether they are considered as trustees or individuals. It is perhaps to be regretted that the defendants are not sued as representing the minority of the caste under section 30 of the Civil Procedure Code, but that does not prevent the defendants being sued individually. It is not necessary for me to determine whether the decree will affect or can be enforced against members of the caste other than the defendants. Lastly, I consider that the decree prayed for will not conflict with the duties of such of the defendants as were parties to the consent decree in Suit No. 488 of 1888, or are trustees under the deed of trust, Exhibit B. It is quite clear that the terms of the trust deed as they now stand carry out the real intention of the decree and are not inconsistent with its actual wording. The Exhibits A 22, A 23, A 21, when carefully considered in connection with the evidence of Bhármal Ruttonsi, make this rather involved question tolerably clear. I do not think that it is necessary for me to explain it in detail. The intention of the defendants to hold a feast in the caste oart and to admit Rájgur Bráhmans to it is not denied. The notice to the defendants to desist from doing so is Exhibit 38, dated the 9th August, 1894.

There will be a decree in terms of the prayer of the plaint prohibiting the defendants from bringing Bráhmans into the oart to dine so long as the resolution of the caste prohibiting the practice continues in force. Seeing that the action of the defendants is backed up by a considerable number of the caste and that the point at issue is an undetermined one, I do not think it is a case for costs.

If I might be allowed to give unjudicial advice, I should suggest to the caste that they should act in accordance with this judgment for at least a year and see how the arrangement works and then call a full meeting and determine whether to continue it or

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to revert to the former practice. At the end of a year they will approach the subject with calmer minds on each side.

Attorneys for plaintiffs :—Messrs. *Little, Smith, Nicholson and Bowen.*

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

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

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BA'LKRISHNA MHA'DSHET (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* VISHVANA'TH KESHAV JOG (ORIGINAL PLAINTIFF), RESPONDENT.*

Khásgi (private or personal) land of a khoti sharer—Mortgage of the khoti takshim (share)—Sale in execution of a decree on the mortgage—Partition among the khoti sharers—Interest acquired by the purchaser at the execution sale—Agreement by the mortgagor to be responsible for the revenue—Agreement coming to an end with the extinction of the equity of redemption.

Primâ facie all land not shown to be alienated is liable to assessment, and the mere fact that no revenue was paid by a khoti co-sharer in respect of *khásgi* (private or personal) land in his occupation is not sufficient to prove its exemption from liability when it has passed into the hands of a stranger.

One Sadáshiv, a sharer in a khoti village, mortgaged his *khásgi* land appertaining to his share in the khoti to the plaintiff and undertook to pay the Government dues on it. Plaintiff got a decree on his mortgage and in execution the land was sold, and purchased by defendant in the year 1878. In the year 1881 the khoti sharers effected partition. In 1883 defendant took possession of the land. In 1884 and again in 1885 Sadáshiv having mortgaged his *takshim* (share) including the *khásgi* land to plaintiff, the latter as mortgagee brought a suit to recover *maktá* (fixed) rent in kind payable for the *khásgi* land purchased by the defendant.

Held, that as the partition between the khoti sharers took place after the execution sale, only the occupancy of the land was sold to the defendant, and that the plaintiff was entitled under the circumstances to recover a fair assessment.

Held, disallowing the defendant's contention as to exemption from payment of the rent, that the agreement by the mortgagor to be responsible for the revenue came to an end with the extinction of the equity of redemption by the Court sale.

SECOND appeal from the decision of T. Walker, Assistant Judge of Ratnágiri, confirming the decree of Ráo Sáheb B. Y. Gupte, Second Class Subordinate Judge of Sangameshvar in the Ratnágiri District.

* Second Appeal, No. 733 of 1892.