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the Judge himself. In that form it involves an almost self-evident proposition.

The term *"jángad"* has several meanings. When goods are delivered *"jángad"* it is a question of fact in each case as to the terms upon which they are delivered. When, as found here, they are delivered upon the condition that if not returned within the stipulated time, whether fixed definitely or ascertained by the course of dealing between the parties, they are to be considered as sold to the person to whom they are delivered at the price fixed upon, then the person delivering the goods cannot after the expiration of such fixed period recover the goods back, but his right is to sue for their price.

The second and third questions as narrowed by the Small Cause Court we answer in the negative, and also the fourth question, which can, however, hardly, under the circumstances stated, be said to be a question of law.

The decree of the Small Cause Court will, therefore, stand. Costs costs in the case.

Attorneys for the plaintiff :—Messrs. *Mulji and Raghowji.*

Attorneys for the fourth defendant :—Messrs. *Brown and Moir.*

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

1895. *September* 3.

DAYA'RA'M HARGOVAN (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* JETHA'BHAT LAKHMIRA'M AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Jurisdiction—Caste question—Mochi caste at Surat—Auditch Brâhmans of Ahmedabad—Hereditary priests—Delegates of Auditch panch at Ahmedabad—Dismissal of delegates by the caste—Suit for injunction and damages—Decision of caste—Jurisdiction of Civil Courts.

The hereditary priests of the Mochi caste deputed certain persons to perform religious ceremonies for the caste. The caste, however, dismissed these delegates, and the defendants, who were members of the caste, employed other persons to perform certain religious ceremonies for them. The plaintiffs sued for an injunction and damages, alleging that they were entitled to perform these ceremonies and to receive the fees.

* Second Appeal, No. 207 of 1894.

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Held, that the Court had no jurisdiction. The Civil Court could not enquire into the validity or otherwise of the decision of the caste in the matter. The parties were bound by it, and the plaintiffs could not legally complain of the action of the defendant, who had done no more than obey that decision,

SECOND appeal from the decision of J. B. Alcock, District Judge of Surat, reversing the decree of Ráo Sáheb Madhuvachrám B. Hora, First Class Subordinate Judge.

The plaintiffs, who alleged themselves to be the *kul gors* (hereditary priests) of the Mochi (shoe-maker) caste at Surat, sued the defendants for an injunction and damages, alleging that the defendants employed an outsider to perform certain religious ceremonies which the plaintiffs were entitled to perform, and thus deprived them of their fees.

The defendants answered that they were not bound to have ceremonies performed by any particular priest; that whoever performed the ceremonies was entitled to the fees; that the whole caste had forbidden the plaintiffs to perform any of the ceremonies; that the suit did not fall under section 54 of the Specific Relief Act (I of 1877); and that the injunction asked for could not be granted.

The Subordinate Judge found that the plaintiffs were not entitled to the right claimed; that they were forbidden by the Mochi caste at Surat to perform any of the ceremonies; that they were not hereditary priests, and were liable to be dismissed; that the defendants were not bound to employ them; and that the plaintiffs were not entitled to an injunction. He, therefore, dismissed the claim.

On appeal by the defendants, the Judge reversed the decree. The following is an extract from his judgment:—

"There is no dispute about the facts of this case. It appears that the Auditch Bráhmans of Ahmedabad are the *kul gors* or hereditary priests of the Surat Mochis, and that certain persons are deputed by the panch of these Bráhmans to perform religious ceremonies for the Mochis. As these unfortunate persons lose caste by performing ceremonies for low-caste people, they have to pay a fine to the Bráhman panch. They are then authorized to act on behalf of the panch as priests. Their position, in fact, is analogous to that of one member of an undivided family of priests officiating alone on some particular occasion. They are not in the position of a priest appointed by a man himself, but they are delegates of the Ahmedabad Bráh-

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mani. That being so, they are not liable to dismissal at will. All the plaintiffs are authorized delegates.

"The reason why the Mochis dismissed the plaintiffs is that on one night, when a large number of marriage ceremonies had to be performed, they could not get through with them before day-break. This does not seem to be a fault of the kind which would warrant dismissal. Only crime or immorality or wilful neglect of duty would warrant that. There is nothing in section 54 of the Specific Relief Act to prevent the injunction asked for from being granted."

Defendant No. 1 preferred a second appeal.

Perozeshah M. Mehta (with *Motilál M. Munshi*) for the appellant:—The custom in the Mochi caste at Surat is that marriages must be performed before day-break. On a particular day a large number of marriages had to be performed, and the plaintiffs, who were the delegates of the Auditch Bráhmans at Ahmedabad, the hereditary priests of the Mochi caste at Surat, did not bring with them a sufficient number of persons to assist them to perform the ceremonies before day-break. The caste, therefore, resolved to exclude them from performing ceremonies. The plaintiffs are not hereditary priests in the sense of the office devolving from father to son. Any member of the community set apart at Ahmedabad for performing ceremonies in the Mochi caste at Surat can come down and perform the ceremonies on receipt of proper fees. The defendants are not bound to have the ceremonies performed by plaintiffs only. In a case of this kind, the caste has power to pass a resolution excluding the plaintiffs from officiating, and a claim either for damages or injunction is not sustainable in a Civil Court—*Rája* v. *Krishnabhat*[1].

Shivrám V. Bhandárkar for the respondents (plaintiffs):—The Judge has found that we are the delegates of the Auditch Bráhmans, who are the hereditary priests of the Mochi caste at Surat. The finding is a finding of fact, and, therefore, binding in second appeal. The Auditch Bráhmans do not oppose our claim, and, therefore, the defendants cannot do so. We contend that we are the hereditary priests through the Auditch Bráhmans, and the Mochi caste has no power to discontinue our services. We are entitled to recover damages—*Sitárámbhat* v. *Sitárám Ganesh*[2];

(1) I. L. R., 3 Bom., 232. (2) 6 Bom. H. C. Rep., A. C. J., 250.

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Vithal v. *Anant*[1]; *Wáman Jagannáth* v. *Bálaji Kusáji*[2]; West and Bühler, p. 398.

FARRAN, C.J.:—Plaintiffs have brought this suit for an injunction and damages on the ground that although they are the hereditary priests of the Mochi caste, the defendant employed another Bráhman to perform certain ceremonies for him. The Subordinate Judge dismissed the claim, holding that the plaintiffs were not the hereditary priests of the Mochi caste, but only the delegates of the Auditch panch at Ahmedabad, and that the Mochi caste had passed a resolution to the effect that no work should be taken at the hands of the plaintiffs. The District Judge reversed that decree. He found that the Auditch Bráhmans of Ahmedabad were the hereditary priests of the Surat Mochis, and that the plaintiffs were deputed by the panch of those Bráhmans to perform religious ceremonies for the Mochis, and were thus authorized to act as priests on behalf of the panch. He also found that the Mochis dismissed the plaintiffs, but he says that it was not for a fault which would warrant dismissal; "only crime or immorality or wilful neglect of duty would warrant that," and, therefore, he awarded the claim.

The grant of an injunction is clearly wrong (see *Raja* v. *Krishnabhat* [3]). We are of opinion that the award of damages is also under the circumstances unsustainable. Assuming that the Auditch Bráhmans are the hereditary priests of the Mochi caste at Surat, and that they have the power of deputing priests to officiate at Surat, there is nothing in the case which shows that the Mochi caste is bound to accept, as their priest, any one so sent. The Subordinate Judge says it would be extremely difficult to determine this point, and there is no determination of it in the case. Both the Courts admit the power of the Mochi caste to dispense with the services of the delegated priest. It seems to us that some such power as this must rest with the caste, and the evidence of the principal plaintiff himself shows that he does not dispute this power; for, after dismissal, he applied to the caste and was re-admitted as their priest. We can find no authority for the proposition laid down by the Judge

(1) 11 Bom. H. C. Rep., 6. (2) I. L. R., 14 Bom., 167.
(3) I. L. R., 3 Bom., 232.

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that only crime, immorality or wilful neglect of duty would warrant dismissal. The cause given in Colebrooke's Digest, Vol. 1, page 377, is only a fault.

It is not, however, necessary for us to discuss this point, because we are of opinion that it is not open to a Civil Court, in the circumstances of the present case, to enquire into the validity or otherwise of the decision of the caste in this matter, and that the parties are bound by it, and that the plaintiffs cannot legally complain of the action of the defendant, who has done no more than obey that decision. We, therefore, reverse the decree of the District Judge and restore that of the Subordinate Judge, with costs on plaintiffs in this and the lower Appellate Court.

Decree reversed.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

1895. *September* 5.

BA'LA BIN KESHAV BA'VA' AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS, *v.* MAHA'RU VALAD NA'GU PA'TIL AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 3 AND 4), RESPONDENTS.*

Easement—Right to light and air—Right to have water carried off over neighbour's land—Limit of—Order directing demolition of new building when Court will grant—Sufficient light, right to access of—Light at angle of 45°.

A right to have water carried away over the adjoining land does not give its owner any power to prevent the erection of buildings on the adjoining ground so long as the arrangements necessary to the preservation of his right are made.

An easement of light to a window only gives a right to have buildings that obstruct it removed so as to allow the access of sufficient light to the window.

SECOND appeal from the decision of Ráo Bahádur N. N. Nánávati, First Class Subordinate Judge of Dhúlia with appellate powers, confirming the decree of Ráo Sáheb G. B. Koparkar, Subordinate Judge of Nandurbár.

Suit for an injunction. The plaintiff prayed for an order directing the defendants to remove a building recently erected to the south of his house, alleging that the said building obstructed his light and air and the passage of water from his roof and from a drain (*mori*) situate in the south corner of the terrace (*sajja*) of his house.

* Second Appeal, No. 277 of 1894.