family will be bound by all acts of the manager (or the adult members acting as managers) which are necessarily incidental to or flowing out of the carrying on of that trade, whether it be singly or with a co-partner." The same principle will hold good when the sole member of the Hindu family is an infant as here, and the ancestral trade is carried on under the superintendence of the natural guardian of the minor for the benefit of herself (she having a claim to maintenance) and the said minor. For these reasons I would hold, if there were no bar to the suit, that plaintiffs are entitled to have an account taken of their dealings with the Sihore firm, of which Goolibái is the owner, it being open to Goolibái, on the account being taken, to show that any items are not fairly debitable to her firm. Findings on issues Nos. 1, 2 and 3 in the negative.

Suit dismissed with costs.

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

Attorneys for defendants :—Messrs. *Dikshit and Dhanjisha.*

ORIGINAL CIVIL.

Before Sir C. Farran, Knight, Chief Justice, and Mr. Justice Strachey.

ISHWARDA'S TRIBHOVANDA'S, PLAINTIFF, *v.* KA'LIDA'S BHA'IDA'S AND OTHERS, DEFENDANTS.*

1896. *July* 3,

Small Cause Courts Act (XV of 1882), Sec. 69—Duty of the Judge in stating a case for opinion of the High Court—Existence of a question of law, &c., a condition precedent.

Under section 69 of the Presidency Small Cause Courts Act (XV of 1882) the existence of such a question of law or usage or construction as therein mentioned is a condition precedent to a reference to the High Court, and if no such question arises, the Small Cause Court has no authority to refer and the High Court no jurisdiction to deal with the reference.

The duty of drawing up the case, where a reference is made, is imposed on the Court, and it is responsible for the form of the case.

CASE stated for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act (XV of 1882) by C. W. Chitty, Chief Judge :—

* Small Cause Court Suit, No. $\frac{859}{25733}$ of 1895.

1896.

ISHWARDÁS TRIBHOVANDÁS v. KÁLIDÁS BHÁIDÁS.

"1. This was a suit brought by the plaintiff to recover from the fourth defendant possession of a diamond buckle said to be worth Rs. 1,500, and, in case the fourth defendant should be held entitled to retain the buckle as security for moneys advanced upon it, the plaintiff further claimed that the first, second and third defendants or some or one of them might be decreed to pay to the plaintiff, as damages for breach of duty, such sum as might be held to be due on the security of the said buckle.

"2. The facts of the case and the reasons for my decision are fully set out in my written judgment, a copy of which is hereto annexed, and to which I crave leave to refer. As therein stated, I dismissed the suit and certified Rs. 90 as the professional costs of the fourth defendant. The conduct of the second and third defendants was such as, in my opinion, to disentitle them to any award of costs. I had no doubt that the plaintiff had been unjustly deprived of the buckle, but for the reasons stated I was of opinion that he could not recover it back in this suit.

"3. At the request of the plaintiff I made my judgment contingent upon the opinion of the High Court. The questions suggested by the plaintiff's counsel are as follows:—

(i) Whether a broker to whom goods are entrusted 'jangad' with a fixed price can, at his option and without the consent of the owner, convert the said entrustment into a sale to himself by failing to return the said goods to the owner within a reasonable time?

(ii) Whether, under the circumstances disclosed in the case and the facts as found by the Court, the fourth defendant cannot be said to be holding goods (*viz.*, the buckle) obtained from the owner by means of an offence or fraud as contemplated by section 178 of the Indian Contract Act?

(iii) Whether under the circumstances found in the case the Court ought not to have passed a decree against the fourth defendant?

(iv) Whether, in any event, the Court ought not to have passed a decree against the first, second and third defendants or some or one of them?

"4. With regard to the first question, I have no objection to it, except that it assumes the character of a *'jangad'* transaction to be a mere entrustment to a broker. I would add to it the following questions as stated in my judgment, *viz.*:—

(i) (*a*) Whether the plaintiff having delivered the buckle as *'jangad'* at a fixed price to the first and second defendants can in any case sue for the return of the buckle?

(i) (*b*) Whether the plaintiff's remedy would not be confined to the suit for the price?

"5. As to questions (ii) and (iii), I have nothing to say except I presume their Lordships will not regard any circumstances of the case except upon the facts found by me.

"6. As to the question (iv), I may say that I was unable to pass any decree against the defendants therein named, for the simple reason that the plaintiff did not ask for it. His counsel admitted that under the circumstances the relief which he sought against the defendants Nos. 1, 2 and 3 could not be granted. The plaintiff did not (as he might have done) sue those defendants for the price of the buckle, and I understood his counsel to say that all that the plaintiff wanted was a decree for the return of the buckle.

"7. The buckle was attached before judgment and remains in the custody of this Court pending the return of this reference. The plaintiff has deposited in Court the amount of the costs awarded and Rs. 50 to meet the costs of reference."

The facts of the case as found by the Chief Judge were as follows:—

"I think the plaintiff must be regarded as having been at one time the owner of this buckle. The buckle was in April, 1893, pledged to him by Khushálchand Ootamchand, and as mortgagee the plaintiff sold it, buying it himself, through his nominee Kubla Kika, for Rs. 1,200. However shady may have been this transaction, it is not in dispute here, and the plaintiff asserts that Khushálchand has ratified the sale. The plaintiff, therefore, must be regarded as the owner of the buckle, when on Posh Sud 2nd (9th January, 1894) he gave it *'jangad'* to the first and second

1896.

ISHWARDÁS TRIBHOVANDÁS v. KÁLIDÁS BHÁIDÁS.

defendants. His transaction is admitted and is evidenced by the entry in the plaintiff's *'jangad' vahi.* The price of the buckle is there given at Rs. 1,500, and a hoop ring was also given *'jangad'* at Rs. 125, which was subsequently returned to the plaintiff. The first and second defendants took the buckle, alleging that they had a customer in view. The first defendant has not appeared before this Court, but it is clear that he had nothing to do with the transactions that followed. The second defendant alleges that on the 3rd Posh Sud, the day after he received the buckle, the plaintiff sold it to him out and out for Rs. 1,200, for which he passed a promissory note to the plaintiff and arranged that it should be taken into account when making up the accounts of the sale of a necklace in which he alleges he was the plaintiff's partner. His story I disbelieve and hold that no such sale as alleged by the second defendant is proved. The second defendant holding the buckle *'jangad'* from the plaintiff in his turn handed it over to the third defendant. Here again there is a conflict of evidence. The second defendant says that he gave it to the third defendant *'jangad,'* and produces an entry signed by the third defendant to that effect. The third defendant says that the buckle was pledged with him by the second defendant to secure Rs. 800, the value of a pair of earrings, and a further sum of Rs. 150 paid to Manchubhái Dáyábhái on second defendant's account. The third defendant in the Police Court at first admitted his signature to the *'jangad'* entry, but afterwards, when he found what the entry contained, denied it. Before me his denial of the signature was unsatisfactory, and he prevaricated much when questioned about it. The pledge to him is not proved by any extraneous evidence, and I incline to the belief that he too received the buckle *'jangad.'* This was on the 27th January, 1894, eighteen days after the buckle had been received from the plaintiff. The third defendant in his turn handed over the buckle to the fourth defendant. There is no dispute that in this case it was handed over by way of pledge to receive moneys advanced by the fourth defendant to the third defendant. The date of this pledge was 4 Falgun Sud 1950. The debt now due to the fourth defendant on the security of the buckle amounts to over Rs. 1,800."

1896.

ISHWARDÁS TRIKHOVANDÁS v. KÁLIDÁS BHÁIDÁS.

Lang (Advocate General) for plaintiff.

Macpherson for defendant No. 4.

FARRAN, C. J.:—We have felt considerable difficulty in dealing with the questions submitted to us in this case owing to the form in which they are framed. After the statement of facts drawn by the Judge himself follows a series of questions suggested by the plaintiff's counsel, some of which (questions 2 and 3) virtually involve for their solution an inquiry as to whether the findings of facts by the Chief Judge are correct. Questions in such a form are inadmissible. The learned Chief Judge evidently himself felt that this was so, since he adds a para. (5) to the case to narrow their scope, but even when so narrowed it is difficult to ascertain what particular question of law they are intended to raise.

Section 69 of the Presidency Small Cause Courts Act (XV of 1882) makes it a condition precedent to the drawing up of a statement of the facts of the case by the Small Cause Court, and referring it for the opinion of the High Court, that a question of law or usage having the force of law or as to the construction of a document which may affect the merits, arises in the case. If upon the findings of the Judge no such question arises, the Small Cause Court has no authority to refer the case for the opinion of the High Court, and the High Court has no jurisdiction to deal with it. The section, moreover, imposes on the Small Cause Court the duty of drawing up the case, and though in framing it that Court may well invite the assistance of the parties and give weight to their suggesstion, yet it ought not to send up questions which involve the High Court in the dilemma of either entering upon matters of fact, or refusing to answer the questions, or drawn in such a form as to involve an assumption which the facts as found by the Judge do not warrant. We would point out that the Small Cause Court is itself responsible for the form of the case which it submits for the opinion of the High Court.

The first question, involving an assumption which the facts found in the judgment of the Small Cause Court do not warrant, we leave unanswered and deal with it in the form prepared by

1896.

ISHWARDÁS TRIBHOVANDÁS v. KÁLIDÁS BHÁIDÁS.

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.