ORIGINAL CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Macleod.

JETHABHAI NARSEY, APPELLANT AND DEFENDANT, *v.* CHAPSEY COOVERJI, RESPONDENT AND PLAINTIFF.*

1909. *August* 12.

Caste—Trustee of caste funds—Extent of right to inspect documents—Demand and refusal—Jurisdiction of Civil Courts in caste questions—Application of Indian Trusts Act (II of 1882), sections 5 and 6, to creation of trusts of caste funds—Civil Procedure Code (Act V of 1908), section 151.

As a result of dissensions in a Hindu caste a suit was filed by the plaintiff, a trustee of certain caste funds and member of the Managing Committee, against the defendant, a co-trustee and the President of that Committee. The plaintiff prayed for a declaration that he had the right to inspect all books and documents of the Mahajan Managing Committee, Sub-Committee and Trustees, and for an injunction restraining the defendant from interfering with him in the exercise of such right. The only two documents about which there was any real controversy were the minutes of the Sub-Committee and the correspondence file of the Mahajan.

Held that as trustee of the Derasar and Sadharan funds, the plaintiff had no right, either in law or by virtue of any caste rules, to the roving inspection claimed.

Bank of Bombay v. *Suleman*(1) referred to.

Held, further, that the Mahajan fund of this caste being a purely secular fund the Indian Trust Act applied, and the plaintiff could not claim to have been made a trustee of that fund merely by virtue of a caste resolution and his own letter of acceptance.

Held, further, on the evidence, that there had been no express demand addressed by the plaintiff to the proper quarter, and no refusal by the defendant such as would be necessary to enable a suit of this character to succeed.

Held, further, that where rights to property are not involved all matters of internal management must be left to the decision of the caste.

The question in dispute was in reality a question between the caste and a section, apparently a small section, of the caste led by the plaintiff, and as such it was outside the Court's jurisdiction in accordance with the decision in *Nemchand* v. *Savaichand*(2). *Lalji Shamji* v. *Walji Wardhman*(3) referred to and distinguished.

* Original Suit No. 687 of 1905, Appeal No. 1430.

(1) (1903) 32 Bom. 466 at p. 474. (2) (1880) 5 Bom. at p. 84 F. N.

(3) (1895) 19 Bom. 507.

1909.

JETHABHAI NARSEY v. CHAPSEY COOVERJI.

Held, lastly, that when according to well established principles certain questions have been removed from the jurisdiction of the Court, they cannot be brought within the jurisdiction under section 151 of the Civil Procedure Code (Act V of 1908).

THIS was a suit filed by the plaintiff for a declaration that he had the right to inspect and take copies of all books of account, minute-books and documents of the Mahajan, Managing Committee, Sub-Committee, and Trustees of the Cutchi Dassa Oswal caste, and for an injunction restraining the defendant from interfering with him in the exercise of that right. Both the parties were trustees of the Derasar and the Sadharan funds of the caste and both were similarly members of the Managing Committee, the defendant being President of that body.

The plaintiff alleged that complaints had been made to him that certain of the caste funds had been misapplied and irregular resolutions passed by the Managing Committee, and it was with a view of investigating these complaints that he claimed the inspection. While admitting that his right to inspection as a member of the caste was subject to the permission of the President or Secretary of the Managing Committee, he asserted that, under the caste rules, as a trustee he had an absolute right.

The defendant denied the plaintiff's right, and contended further (*inter alia*) that the question was purely a caste question, and not one which the Court could entertain.

The case came before Mr. Justice Chandavarkar, who gave judgment for the plaintiff with costs.

The defendant appealed.

Strangman (Advocate-General) with *Joshi* and *Taraporevalla* for the appellant:—

In the first place, the plaintiff in his capacity as member of the caste or as member of the Managing Committee has neither at common law, nor under the caste rules, any such right as alleged. See *Bank of Bombay* v. *Suleman*[1]. As trustee he bases his claim both on the common law and on the caste rules.

(1) (1908) 32 Bom. 466.

His trusteeship of the Derasar and Sadharan funds, however—and these are the only funds of which he is a trustee—cannot improve his position, as the documents in question (the minutes of the Sub-Committee and the correspondence file of the Mahajan) do not in any way appertain to these funds. Rule 8 of the caste rules, on which he relies, excepts trustees from the general prohibition only in respect of the particular documents relating to their trusts.

In the second place, even assuming that the plaintiff has such a right, has it ever been denied him by the defendant? The correspondence shows this was not so. On this point see Taylor on evidence, Article 1502.

Finally, assuming all the above points in the plaintiff's favour, he has no cause of action in a Court of law. It is a caste question entirely and he must go to the caste for relief. No right of property is involved. A decree of this Court based on a caste rule would be worth nothing, inasmuch as the caste could at once render it nugatory. *Murari* v. *Suba*[1], *Pragji Kalan* v. *Govind Gopal*[2], *Raghunath Damodhar* v. *Janardhan Gopal*[3], *Lalji Shamji* v. *Walji Wardhman*[4].

Padshah with *Jinnah* for the respondent:—

The defendant was also a trustee of the Mahajan fund. The resolution of 19th January 1905 appointed him trustee, and he wrote accepting the office on 3rd February. As trustee of this fund he certainly had the right of inspection claimed.

In *Bank of Bombay* v. *Suleman*[5] the plaintiff had no special interest as the plaintiff has here, as a trustee and member of the Managing Committee. This is not a caste question, but the invasion of the right of a trustee, non-exercise of which would put him to damages which cannot be assessed.

The plaintiff's right was certainly denied by the defendant, who was one of several joint tort-feasors. Action by the Court in the matter would not interfere with the autonomy of the caste.

(1) (1882) 6 Bom. 725.
(2) (1887) 11 Bom. 534.
(3) (1891) 15 Bom., p. 610.
(4) (1895) 19 Bom. 507.
(5) (1908) 32 Bom. 466.

1909.

JETHABHAI NARSEY v. CHAPSEY COOVERJI.

Strangman in reply :—

The plaintiff was not a trustee of the Mahajan fund. No trust-deed was executed, although the resolution of 19th January 1905, on which he relies, clearly intended a deed to be executed. This fund was definitely held to be a secular fund in *Thackersey* v. *Hurbhum*[1], and as such comes under the Indian Trusts Act. Sections 5 and 6 of that Act require a written instrument and a transfer of the property for the trust to be valid. The plaintiff thus cannot claim to be a trustee of this fund merely by reason of the resolution and his letter of acceptance. Further, he never demanded inspection as a trustee of the Mahajan fund. Nor did he put forward this claim in the Court below.

Cur. adv. vult.

BATCHELOR, J.—This rather heavy litigation was the unfortunate result of a division or faction in the Cutchi Dassa Oswal caste, to which both the parties belong. At the time of the suit the defendant was President and the plaintiff was a member of the Managing Committee of the caste while both the plaintiff and defendant were trustees of two trust funds established by the caste, under separate trust deeds, called the Derasar and Sadharan funds.

The plaintiff sued for a declaration that he was entitled to inspect and take copies of all the books and documents of the Mahajan, the Managing Committee, the Sub-Committee and the Trustees; and for an injunction restraining the defendant from interfering with the plaintiff's exercise of his rights in this regard. The defendant's main answers to the suit were that the question in dispute was a purely caste question outside the jurisdiction of the Court; that the plaintiff was not entitled to inspect the minute books of the Sub-Committee or the correspondence file; and that no cause of action had arisen against the defendant who had never refused or denied the plaintiff's right to take inspection of such documents as he had a valid claim to see.

(1) (1883) 8 Bom. 432

The learned judge below found that the suit was properly cognizable by the Court; that the plaintiff had a right to free inspection of all the books and documents of the caste; and that the defendant had on the 7th September 1905 denied the plaintiff's right. He, therefore, made a decree declaring that the plaintiff was entitled to inspect and take copies of all or any of the books, and restraining the defendant from interfering with the plaintiff's exercise of his right.

From that decree, the defendant now appeals, and the learned Advocate-General on his behalf has addressed to us a three-fold argument. He contends, first, that the plaintiff has no right to inspect the minute books of the Sub-Committee or the correspondence file, these being the two documents about which alone there is any controversy; secondly, that, if such a right exists in the plaintiff, it was never denied by the defendant; and, thirdly, that in any event the question between the parties is a purely caste question involving no rights to property, and is not within the Court's jurisdiction.

Mr. Padshah for the respondent-plaintiff seems to have felt some difficulty in supporting the decree on the grounds assigned in the learned Judge's judgment, and has accordingly directed the main stress of his argument towards establishing that his client was a trustee not only of the above-mentioned Derasar and Sadharan funds but also generally of the whole Mahajan property. If that is so, it is argued that his capacity as a trustee of the whole caste property would give him a valid claim to inspect all the books and documents of the caste. Bearing in mind the character of the two documents now in dispute, we seriously doubt whether even on this hypothesis they would be necessarily exposed to the plaintiff's inspection; but this point need not be decided because we think that the plaintiff's claim to be a trustee of the whole Mahajan property must be disallowed. It is sufficiently answered, in the first place, by the fact that there was never any demand made by the plaintiff for inspection on this footing. Upon this point the most important evidence is Exhibit K, the correspondence immediately preceding the institution of the suit, and if reference be made to this correspondence, particularly to the plaintiff's solicitor's letter of 15th

1909.

JETHABHAI NARSEY v. CHAPSEY COOVERJI.

August 1905, it will be seen that plaintiff's demand was grounded upon his being a member of the Managing Committee and a trustee of the Derasar and Sadharan funds. So, in the suit which the plaintiff has subsequently filed to set aside the order of the caste purporting to dismiss him from his trusteeship, the only trusteeship alleged is that of these two funds. It appears, indeed that the now alleged trusteeship of the whole Mahajan property is a new point, which was not taken before the trying Judge. It is true that in the first para of the plaint it is stated that "the plaintiff and defendant are both trustees of the property of the caste," but we think that these somewhat general words must be read as mere description, not specifically raising any title beyond that arising from the trusteeship of the separate funds. This view receives support from the voluminous record, which may be searched in vain for any such distinction as is now sought to be drawn. From that record it appears to us indisputable that, in the Court below, the suit was tried out upon the understanding between the parties that the only trusteeship relied on by the plaintiff was that of the two separate funds. It was at first denied for the defendant that the plaintiff was even a trustee of those funds, the contention being that he had been dismissed by the caste; later, however, this contention was abandoned as the alleged dismissal was subsequent to the date of suit. It was therefore, formally admitted by counsel for the defendant that "the plaintiff was a trustee". But it is, we think, quite certain that counsel for the defendant could never have admitted the plaintiff's claim to be a trustee of the whole caste property.

Then, admitting for the sake of the argument that the point is now open to the plaintiff, has he shown that at date of suit he was a trustee of the whole caste property? To make good the position he relies on Exhibit D, the caste resolution of the 19th January 1905, and Exhibit U, the plaintiff's acceptance of that resolution on 3rd February 1905. Exhibit D is the record of a successful motion at a meeting of the Mahajan that the plaintiff and other members named "be appointed (or named) and they are to get the properties of" the Mahajan transferred to their names, and that, getting a trust-deed of the Mahajan fund prepared they are to take "charge of the management of the

Mahajan". In Exhibit U, the plaintiff acknowledges that he has been "selected", and accepts, or agrees to, the action of the caste. We are, however, of opinion that these two Exhibits do not suffice to constitute the plaintiff a trustee of the Mahajan property. Admittedly this was not a case of a new appointment to an existing trust, for no trust of the Mahajan property had ever before been created and that property was then vested in the caste, on whose behalf the powers of management were delegated to the Managing Committee under rules 1 and 2 of the caste rules, Exhibit J. Now Exhibit D clearly contemplates that, to carry into effect the announced intention of creating a trust, a trust deed should be prepared divesting the caste and vesting the property in the persons chosen to be trustees. No such deed has ever been executed or even prepared, and the legal title to the property still remains with the caste. This fact becomes the more significant when contrasted with the other fact that in regard to the Derasar and Sadharan funds regular deeds of trust were prepared and executed: see Exhibits A and B. In these circumstances it appears to us that the intention to create a trust of the Mahajan fund remained uneffected. Upon this point reference may be made to sections 5 and 6 of the Indian Trusts Act, which require for the creation of a valid trust an instrument in writing and a transfer of the property. It is true that the Trusts Act does not apply to public or private religious or charitable endowments; but it has already been held by this Court in *Thackersey Dewraj* v. *Hurbhum Nursey*[1] that the Mahajan fund of this caste is a purely secular fund, and we think that the principles of sections 5 and 6 of the Act are properly applicable. Upon these grounds we come to the conclusion that no trust of the Mahajan fund was created, and that the plaintiff cannot claim to have been a trustee of the whole caste property.

If that is so, then the question is narrowed down to the form which alone we understand it to have assumed in the lower Court, that is to say, the question whether the plaintiff is entitled to claim this inspection

(1) (1883) 8 Bom. 432.

1909.

JETHABHAI NARSEY v. CHAPSEY COOVERJI.

(*a*) in his character as a trustee of the Derasar and Sadharan funds, or

(*b*) in his character as a member of the Managing Committee, or

(*c*) in his character as a member of the caste.

Now as to the plaintiff's capacities under heads (*b*) and (*c*) Mr. Padshah, whose forcible and exhaustive argument has omitted nothing capable of telling in his client's favour, has candidly admitted that the plaintiff's privileges in regard to inspection must be determined solely by reference to the rules of the caste, and that these rules—see rule 8—formally exclude the right of inspection. The caste having made a rule in regard to inspection no other line of argument was possible; but even if the rules of the caste had been silent on the question of inspection, we do not think that a right to inspection existing in any person by virtue of his being a member of the caste or of its Managing Committee could be evolved by a reference to English law. That unique aggregation, the Hindu caste, is so wholly unknown to the English law that, as it seems to us, English decisions concerning English corporations and partnerships tend rather to confusion than to guidance upon such a question as that now in hand. A Hindu caste may have points of resemblance to English corporations and partnerships, but its points of difference appear to us even more numerous and more radical. We have, therefore, had no hesitation in accepting Mr. Padshah's admission upon this part of the case, though when we come later to the question of the caste's autonomy we shall have occasion to adduce further reasons in support of our view.

If we are right so far, then, the result is that the plaintiff can make no claim to this inspection except as a trustee of the particular funds known as Derasar and Sadharan. We propose in discussing the whole question to follow the order of the Advocate General's argument, to inquire, that is to say, first, whether plaintiff had any such right; secondly, whether, if so, it was definitely demanded by the plaintiff and was denied by the defendant; and, thirdly, whether in any case the question is not a caste question beyond the Court's jurisdiction.

Upon the first of these questions it is plain that, as trustee of the two funds, the plaintiff has certain legal rights apart altogether from any privileges which he may have under the regulations of the caste; for though it is competent to a caste to appoint a man a trustee or not to appoint him, it cannot, having once so appointed him, restrict the legal rights incidental to his position as trustee. We must, therefore, examine separately the plaintiff's legal rights as trustee and his caste rights, for it is enough for him to succeed upon either.

His legal rights as trustee of the Derasar and Sadharan funds cannot, in our opinion, entitle him to inspection of the two contested documents which do not appertain to either of these trusts. This, as we understood his argument, was not seriously contested by Mr. Padshah, who upon this point relied on the larger contention that the plaintiff was a trustee of the whole caste property; and it would seem that the distinction and its consequences were not prominently brought before the learned Judge below. The documents of which inspection is claimed are, as we have said, the Sub-Committee's minute book and the correspondence file of the Mahajan. The Sub-Committee's minute book contains the record of what is called the Judicial Branch of the caste, that is, of the inquiries made by the Sub-Committee into caste offences alleged to have been committed by various members. The correspondence file contains the letters written and received by the Managing Committee on behalf of the whole caste. These documents in no sense belong to the Derasar or Sadharan trusts, which have separate books of their own, and there is no allegation that these books have been incorrectly kept. As trustee of these two funds only, the plaintiff could, we think, have no legal claim to a roving inspection of all caste documents on the ground that some of such documents may possibly be found to contain entries bearing upon questions of expenditure having some connection with the trusts, and no such power is implied in the deeds creating the trusts, Exhibits A and B.

This part of the case need not, however, be further pursued because we were not pressed to allow the plaintiff's claim on the footing of his legal rights as a trustee of the Derasar and Sadharan

1909.

JETHABHAI NARSEY v. CHAPSEY COOVERJI.

funds only. The plaintiff in the Court below and his counsel before us have preferred to rely upon the plaintiff's privileges as a trustee by virtue of the rules of the caste, and the argument is that, though the trusteeship would not suffice to found a valid claim in law, it does suffice to found a good claim under No. 8 of the caste rules to be found under the heading "Secretary." This rule is in the following words:—

"Without the permission of the Secretary or the President no person or persons whatever except the trustees can inspect any book or document whatever, nor can he or they remove it even outside the office."

This is the official translation from the Gujaráti. We have referred to the original, but it throws no further light on the meaning of the rule as to the position of trustees. At the time the rule was made the only trustees in existence were the trustees of the Derasar and Sadharan funds, though there are indications that the caste even then contemplated appointing the same persons to a trust to be created of the whole Mahajan property. The question is, what rights to inspection are conferred upon the trustees by the rule cited. The learned Judge below has read the rule as meaning that the trustees are authorised to inspect all caste documents whatsoever, but, though we have hesitated before differing from his opinion, we are constrained to regard a narrower interpretation as more consistent with the actual words, and with the probable intention of the framers of the rules. It appears to us that the rule enacts a general and sweeping exclusion, from which the trustees are excepted; that is, it is not true to say of the trustees that they are excluded from inspecting all documents whatsoever. But it does not seem to be implied that they are entitled to inspect all documents whatsoever, but rather that they are entitled to inspect some documents (undefined), and in that case the documents referred to would be those belonging to their trusts. In other words, the rule, as we construe it, first prohibits all inspection by any members without permission, and then saves the legal rights of trustees as such. This interpretation seems to us to be the more reasonable when regard is had to the extreme frequency of factious divisions in Hindu castes, and to the ease

with which rights of inspection can be exercised for purposes of dissension and litigation. This particular caste has, as the reports show, been more than once involved in litigation owing to these intestine feuds. We think it more likely therefore that the caste should have narrowly limited these rights of inspection than that it should have lavished them without check on the trustees of the two special funds. We may add that if the broader construction of the rule were to be preferred on the sole ground which appears tenable, namely, the theory that the caste intended to have the existing trustees appointed to a new trust of all caste property then the plaintiff's case would not, in our opinion, be advanced, for upon that supposition he would be seeking to take advantage of an intention or design which the caste never carried into effect. Finally, upon this branch of the case, we think that the actual result will not depend upon the precise construction of rule No. 8. For, let us suppose that the rule does confer upon the trustees—that is, the trustees of the two funds, who alone existed—an unfettered right of inspection of all caste documents; that, as we have shown, would be a mere caste privilege altogether in excess of any claim which the trusteeship of the two funds would legally justify. But what the caste gave yesterday, they could withdraw tomorrow and no decree could be based on a caste privilege of this kind inasmuch as the caste could at once render it nugatory. Nor is this an unreal apprehension; on the contrary, in view of the trustees' action on the 10th September (see Exhibit 36) and the other evidence brought to our notice, it appears to us very probable that the majority of the caste would, as they could, override any decree made in the plaintiff's favour.

This completes our observations on the first question as to the plaintiff's right to claim inspection of these documents, and, for the reasons given, we must hold that the plaintiff had no such right either at law or under the rules of the caste.

For the next question we must assume that that view is wrong and proceed to inquire whether the plaintiff's right was ever denied by the defendant so as to give to the plaintiff a good cause of action. What is required to found a suit of this character is stated, we think correctly, in the following

1909.

JETHABHAI NARSEY v. CHAPSEY COOVERJI.

terms in Taylor's Evidence, Article 1502: "It must be established that an express demand was addressed to the proper quarter and was distinctly refused, or, at least, that the other party showed by his conduct that he was determined not to do what was required." Let us see whether these conditions are satisfied here. First, what was the proper quarter? According to the plaintiff's case, as stated in para 2 of his plaint, the proper and actual custodians of these books were the trustees; and the learned Judge below, for reasons which have not been canvassed before us, held that that case was proved. We are of the same opinion. But the defendant is only one of the trustees, and there is the less reason for allowing the plaintiff to sue him alone inasmuch as he was not present at the meeting of the 10th September, where, for the first time, we meet with a plain refusal to give inspection. As we understand the matter, it is not a case of selecting at will any one of joint tort-feasors. The demand for inspection was not made in the proper quarter, and the defendant cannot alone be held answerable for a resolution of the other trustees at a meeting which he did not attend.

Then assuming there was a demand made to the defendant at the proper quarter, was there such a refusal or denial by the defendant as would justify this suit? We think not. Here we must look a little closely at the facts preceding the institution of this suit, and must bear in mind the obvious consideration that dilatoriness and excuses for inaction are not, at least in India, to be regarded as necessarily equivalent to denial of right. The all important evidence is, in our opinion, the correspondence Exhibit K from 16th August to 11th September 1905. That correspondence discloses to us the plaintiff watching for a favourable opportunity to launch his suit, and on the 1st September his solicitors declare that the plaint is already in draft. It was declared on the 12th September, having on the previous day been sent to counsel for formal settlement. Now para 4 of the plaint, which alleges the refusal of the right, is significantly reticent as to the date when the refusal occurred, and it appears that this allegation was already made when the plaint was put in draft. But the only events on which the plea of refusal is sought to be grounded are those which occurred on the 7th September, if we except a certain faint suggestion

that events of the 8th to 10th may also be prayed in aid. It seems to us clear that these later events cannot be used to support the case against the defendant who was away in Poona when they occurred, and who, as already stated, did not attend the trustees' meeting of the 10th. It is true, as the learned Judge says, that the resolution of the 10th was a denial of the plaintiff's right, but that was a resolution by other trustees, not parties, and the defendant took no part in it. Now if we refer to the correspondence, Exhibit K, we shall see that it is this resolution of the general body of trustees (without the defendant) which alone is referred to as constituting a denial of the plaintiff's right. That follows from the plaintiff's attorneys' letter of the 11th September where we first meet a plain allegation of a refusal, that is, the refusal by the other trustees on the 10th. But the latest letter which can be used against the defendant, owing to his subsequent absence from Bombay, is that from the plaintiff's attorneys, dated the 8th September, referring to the events of the 7th. This letter, however, does not even allege a refusal, despite the plaintiff's then anxiety to make a case; it alleges only "frivolous objections" to conceding the demand and a "pretext" that a certain necessary key was with the Mehta; but even the "pretext" is not apparently disbelieved, for, the plaintiff says that he objects to the key remaining with the Mehta. Even as late as the 11th September, we find the plaintiff saying, through his solicitors, that *unless* the defendant takes a certain course he will conclude that the defendant "objects to the inspection." We must infer from all this that nothing that happened on the 7th September was understood even by the plaintiff himself to amount to a denial or refusal, and in view of the plaintiff's position, to which we have alluded, it is certain that he did not understate his own case. If further assurance were needed, it would be found in the plaintiff's own deposition, where he says in examination-in-chief: "I attended on the 7th September to take inspection and copies. Inspection of the Mahajan book was allowed, but as to the correspondence file I was told it could not be found"; and he goes on to confirm the facts as stated in his solicitors' letter of the 8th September. It is true that, after the lapse of a considerable interval, which enabled him to reconsider his evidence, the plaintiff in cross-examination seized an opportunity to endea-

1909.

JETHABHAI NARSEY v. CHAPSEY COOVERJI.

vour to improve his story, but in all the circumstances we can attach no importance to this attempt. Thus the occurrences of the 7th September, which are wholly, or almost wholly, relied on to support this suit, fail in their purpose because it is manifest that the plaintiff himself never understood them to amount to a denial of his right. For the events between the 7th September and the filing of the suit the defendant was not responsible; they were the acts of the other trustees in the defendant's absence. As to Exhibit M, the record of the trustees' meeting of the 2nd September, we read that as a plain indication that defendant made no refusal, but that the plaintiff was actively endeavouring to discover or to make an excuse for litigation.

Again, the right claimed was an unqualified right to hand over all the caste books for the years 1903, 1904 and 1905. But the plaintiff never became a trustee of the two funds till he signed the two trust deeds, exhibits A & B, on the 7th September 1905, and in any case his claim to inspect earlier documents would have been inadmissible. Therefore, though we hold there was no denial, it would be difficult to say that a denial of an excessive claim would have been unwarrantable. In this context it is relevant to observe that, when pressed as to the purposes for which he wanted inspection, the plaintiff said: "At first I merely wanted to look into the minutes of the Sub-Committee. That was for no particular purpose. I must look into a thing first before I can say why I want to look into it." We read this as meaning that, as the evidence generally suggests, the plaintiff's real object was to make a fishing inquiry in the hope of finding some materials wherewith further to embarrass the majority of the caste. If that is so, reference may usefully be made to the observations of their Lordships of the Judicial Committee in the *Bank of Bombay* v. *Suleman*[1].

There now remains the single point, whether this is a caste question and so beyond the jurisdiction of the Court. That, of course, must be discussed on the assumption that our foregoing findings are wrong. In our opinion this point also must be determined in the defendant's favour. As we have tried to show

(1) (1908) 32 Bom. 474.

in an earlier part of this judgment, the plaintiff's claim cannot be supported by reference to his legal rights as trustee of the two funds. If he is to succeed at all, the plaintiff must succeed, as indeed he himself puts his case, under the rules of the caste, so that the question comes down to this, is the plaintiff by reason of his holding a certain caste office, entitled under the caste rules to inspection of all caste documents? It appears to us that that is eminently a question for the caste, and not for the Court.

Upon this subject we must notice that there is visible a growing tendency to endeavour to enlarge the jurisdiction of the Courts beyond the limits set by existing authorities, but in our judgment the tendency ought not to be encouraged. The records of our Courts show that a Hindu, whose own preferences or inclinations do not commend themselves to his caste, is apt to try and use the civil Court as a means whereby his wishes may be forced on the majority, and we are of opinion that this suit is an illustration of the practice. Mr. Padshah admitted that the authorities of the caste would, as he phrased it, have "concurrent jurisdiction" with the civil Court to determine the question now in issue; and that appears to us to be a dangerous admission. For, though the decisions are not perhaps altogether harmonious, there is no doubt that their general weight favours the test which received the high authority of Sargent C. J. in *Murari* v. *Suba* [1] and was followed by Farran J. in *Lalji Shamji* v. *Walji Wardhman* [2]. That test is, "Would the taking cognizance of the matter in dispute be an interference with the autonomy of the caste?" Now autonomy is rather a large word, and, without attempting to define it, we think it must mean at least as much as this, that where rights to property are not involved all matters of internal management must be left to the decision of the caste. This proposition has the support of several cases which we do not cite as the proposition itself was not challenged before us. No rights to property are involved here, yet the Court's interference is sought on a question for which the rules of the caste make provision. If we are to take the decision out of the hands of the caste, it is difficult to see either what would be left of the caste's autonomy or where the

(1) (1882) 6 Bom. 725. (2) (1894) 19 Bom. 507.

1909.

JETHABHAI NARSEY v. CHAPSEY COOVERJI.

process is to stop; yet it is on many grounds very undesirable that the Courts should assume the jurisdiction, or be burdened with the duty, of deciding the numberless small points of religious or social usage and etiquette which form the common subjects of difference. In *Murari's case* there was a claim to property, *viz.*, to the fees appurtenant to a caste office, yet Sir Charles Sargent held that, the office being a caste office, the Court was not vested with jurisdiction by reason of the annexed fees. That decision was, no doubt, under the Regulation of 1827 which does not govern suits on the Original Side of this Court, but it has not been argued that the practice on the Original Side under section 9 of the Civil Procedure Code of 1908 differs from the course prescribed by the Regulation, and we can see no reason whatever why the rules as to the admissibility of caste suits should be one thing for the muffassal and another thing for the presidency town. The plaintiff relies on Farran J.'s decision in *Lalji's case*, which was a case among members of the caste now before us, but, if the facts there be examined, we do not think that the decision assists the plaintiff. Upon reading the whole judgment attentively, we think that Farran, J. felt that he was going as near the limit of interference as was possible but it is not necessary for us to consider the correctness of his decision as we find that it is easily distinguishable from the present case. For, in *Lalji's case* a question of property was involved, *viz.*, the right to the use of the caste oart, and the learned Judge was satisfied that his decree would give effect to the wishes of the majority. Those, as we read the report, were the principal *rationes decidendi*, and both of them are absent here. Here, as the learned Judge below points out, the suit is not in form a suit against the caste, but even in form it is a suit to enforce a caste privilege and for that redress the proper tribunal to approach is the caste whose rule is said to have been infringed, and not the civil Court. The real character of the suit, however, is we think, a claim against the present constituted authorities of the caste; substantially it is a suit to obtain from the Court an order, which the plaintiff knows the caste would never make, as to a matter concerning the internal arrangement of the caste affairs, and this explains why the claim was brought before the Court and not before the caste,

though the caste admittedly had jurisdiction to decide it. The question in dispute is in reality a question between the caste and a section, apparently a small section, of the caste led by the plaintiff, and as such it is outside the Court's jurisdiction in accordance with the decision in *Nemchand* v. *Savaichand*[1] which was approved by Sargent, C. J., in *Metha Jethalal* v. *Jamiatram Lalubhai*[2]. *Nemchand's case* was decided by a Full Bench consisting of Sir Richard Couch, C. J., and four other Judges. The plaintiffs, who represented one of the factions into which the caste was split, claimed a declaration that they were the proper recipients of half the compensation which had been allowed by the Collector for certain shops belonging to the caste. It will be seen, therefore, that there was a distinct and specific claim to property; yet the Full Bench held that the Courts had no jurisdiction. In our opinion the plaintiffs there had a stronger case than has the plaintiff before us and if this appeal has to be decided on a comparison of the authority of the two cases, *Lalji Shamji* v. *Walji Wardhman*[3] and *Nemchand* v. *Savaichand*[1] there can be no question that the authority of the latter must prevail. For, though it is competent to us not to follow the ruling of a single judge, we are concluded by a decision of the Full Bench whether we agree with it or not. But in fact for the reasons given we do entirely agree with the decision in *Nemchand* v. *Savaichand*[1] which so far as we are aware has been the law of this Presidency since 1866: compare *Girdhar* v. *Kalya*[4] and the already cited case of *Metha Jethalal* v. *Jamiatram Lalubhai*[5]; and in our opinion the decision in *Lalji's case* cannot be regarded as authority for extending the jurisdiction of the Court beyond the point at which it is left by the earlier cases.

Finally, as to section 151, Civil Procedure Code, that has no bearing on the present discussion for, when according to well established principles certain questions have been removed from the jurisdiction of the Court, we do not think they can be brought within the jurisdiction on the plea that the Court has inherent

(1) (1880) 5 Bom. at p. 84 F. N.
(2) (1887) 12 Bom. 225.
(3) (1894) 19 Bom. 507.
(4) (1880) 5 Bom. p. 83.
(5) (1887) 12 Bom. 225.

1909.

JETHABHAI NARSEY v. CHAPSEY COOVERJI.

jurisdiction to do what justice requires for the parties before it. That plea cannot be urged in order to extend the jurisdiction of the Court, but to meet the objection often raised that in matters within the jurisdiction the Court can only exercise such powers as are expressly given by the legislature and no others.

On the foregoing grounds, then, and with very sincere respect for the learned trying Judge and his exhaustive treatment of the suit as it was presented to him, we have felt compelled to adopt a different view as to the rights of the parties in this case.

We reverse the decree under appeal, and order that the suit be dismissed with costs throughout.

Decree reversed.

Attorneys for the appellant: Messrs. *Wadia, Gandhy & Co.*

Attorneys for the respondent: Messrs. *Matubhai, Jamietram and Madan.*

K. McI. K.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

1909. *August* 28

A. HAJI ISMAIL & Co., PLAINTIFFS, *v.* RABIABAI AND ANOTHER, DEFENDANTS.*

Practice—Dissolution of partnership—Assets in hands of receiver—Judgment creditor—Charging order—Solicitors' lien for costs.

The rule at common law that a solicitor is entitled to a lien for his costs on property recovered or preserved by his exertions has always been followed by this Court; and, where there are assets of a partnership in the hands of a receiver appointed in a partnership suit, the solicitors engaged in that suit are entitled to ask for a charge on those assets in priority to the creditors of the partnership.

Ridd v. *Thorne* (1), followed.

Where a plaintiff has obtained a decree against a partnership firm, the available assets of which are in the hands of a receiver appointed in a previous

* Original Suit No. 523 of 1907.

(1) (1902) 2 Ch. 344.