

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Fulton.*

ABDUL KA'DIR AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v.  
DHARMA (ORIGINAL DEFENDANT), OPPONENT.\*

1895.

January 8.

*Regulation II of 1827, Sec. 21—"Caste"—Caste question—Contributions to the caste fund—Arrangement between members of the caste for the purpose of paying off the debts of the caste—Hindus—Mohomedans.*

The term "caste" in section 21 of Regulation II of 1827<sup>(1)</sup> is not necessarily confined to Hindus, but comprises any well-defined native community governed for certain internal purposes by its own rules and regulations.

An agreement embodying an arrangement come to between members of the caste for the purpose of paying off the debts of the caste, out of certain contributions to the caste funds, involves a caste question.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb P. B. Joshi, Subordinate Judge of Rájápur, in a small cause suit.

The plaintiffs sued to recover Rs. 10 from defendant Dharma yalad Gulám Lambe under the following circumstances:—

The plaintiffs alleged that they and the defendant were residents of Madhil Mohola (street) at Rájápur; that the defendant and other people of the mohola executed an agreement on the 18th November, 1885, whereby the plaintiffs were appointed *adhikári* (headmen) of the *jamát* (caste), and as such were authorized to recover rupees seven on account of *gláv-jevan* (feeding the villagers) for each marriage when the bride and the bridegroom were from their mohola, and rupees ten from the

\*Application No. 85 of 1894 under extraordinary jurisdiction.

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

First.—(The jurisdiction of civil Courts shall extend to the cognisance of all original suits and complaints between natives and others (not British-born subjects) respecting the right to moveable or immoveable property, rents, Government revenues, debts, contracts, marriage, succession, damages for injuries and generally of all suits and complaints of a civil nature), it being understood that no interference on the part of the Court in caste questions is hereby warranted beyond the admission and trial of any suit instituted for the recovery of damages on account of an alleged injury to the caste and character of the plaintiff, arising from some illegal act or unjustifiable conduct of the other party.

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person at whose house the marriage took place when the bridegroom was from a different locality; that the defendant having given his daughter in marriage to a bridegroom from a different place became liable to pay rupees ten, and that the defendant declined to pay that amount though called upon to do so.

The following is an extract from the agreement :—

“ We have appointed you two persons to be the headmen in connection with the business and affairs of the community. As to that it has been the practice among us from former times to take certain amounts as on account of village (caste) dinner on occasions of the marriages of girls in our said street. Particulars thereof are as follow ;—

“ 7. If the bridegroom and the bride be residing in our street, the amount to be paid to the community on account of caste dinner in that behalf is rupees seven.

“ 10. If a bridegroom comes from another street or from another village to marry a bride living in our street, the amount which he is to be caused to pay to the community on account of caste dinner is rupees ten.

“ In this manner it being the practice from former times to this day to take the amounts on account of caste dinner, we have taken the same as mentioned above. In the same way, you are to receive the amounts as stated in the above agreement, when marriages take place at the house of any member of our community. And if any one of our community should raise any objection to pay the amount on account of caste dinner as stated above, the said amount should be recovered from him by taking legal steps. In the event of marriage taking place at the house of any one of us in our street according to the above agreement, we will pay you the amount as stated above. You are to receive the said amount and pay the same to Bāpu valad Bāba Mālim Vāgu, inhabitant of Rājapur, and take an acknowledgment from him. Our community owe to the said Mālim \* \* \* about Rs. 300 on account of a decree, dated 23rd June, in Suit No. 278 of 1877, and Rs. 400 received in cash on the 16th November, 1885. On account of this amount you are to pay the said Mālim the amount of the above income and render an account thereof to us (members of) the community every year. We have given this agreement in writing of our own free will and pleasure.”

The defendant pleaded (*inter alia*) that the suit involved a caste question, and was, therefore, not maintainable in a civil Court.

The Subordinate Judge held that the question at issue was a caste question, and dismissed the suit.

The plaintiff applied to the High Court under its extraordinary jurisdiction, urging that the Judge erred in law in holding the claim to be a caste question. A rule *nisi* was issued to the defendant to show cause why the decision of the Judge should not be set aside.

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*Nārāyan G. Chandāvarkar* appeared for the applicants (plaintiffs) in support of the rule:—The Judge was wrong in dismissing the suit on the ground that it involved a caste question. Our suit was based upon the agreement executed to us by the defendant and other members of the community; therefore the objection of caste question cannot arise in the case. Even supposing that the case does involve that point, still the parties being Mahomedans, section 21, Chapter II, of Regulation II of 1827 has no application to the present case—*Sayad Hashim Saheb v. Huseinsha*<sup>(1)</sup>.

*Macpherson* with *Ghanashām N. Nádikarni* appeared for the opponent (defendant) to show cause:—He relied on section 21, Chapter II, of Regulation II of 1827; *Dodhusa v. Khemchand*<sup>(2)</sup>; *Kázee Shaik Mohinoodeen v. Usmdji Momudjee*<sup>(3)</sup>.

SARGENT, C. J.—We think that the term “caste” in Regulation II of 1827 is not necessarily confined to Hindus, but comprises any well-defined native community governed for certain internal purposes by its own rules and regulations; and that the agreement referred to in the plaint simply embodies an arrangement come to between members of the caste for the purpose of paying off the debts of the caste out of certain contributions to the caste funds, and as such involves a caste question. We must, therefore, discharge the rule with costs.

*Rule discharged.*

(1) I. L. R., 13 Bom., 429.

(2) P. J., 1882, p. 377.

(3) Morris' Selected Decisions, Vol. IV, p. 48.