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ably have expected in this country, at any rate, to succeed, looking too to the injuries they have suffered, I think that it will be fair while dismissing their suits against the defendant Company to leave all parties to bear their own costs.

Attorney for the plaintiffs: *S. B. Mehta.*

Attorney for the defendants: Messrs. *Little & Co.*

K. McI. K.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

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February 7.

GADIGEYA, ADOPTIVE FATHER ADIVEYA HIREMATH (ORIGINAL PLAINTIFF), APPELLANT, *v.* BASAYA BIN MALLAYA RAPATI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Regulation II of 1827, section 21—Caste question—Civil Court Jurisdiction—Suit to be declared Ayya of Hiremath and to restrain defendant from so styling himself.

The plaintiff sued to obtain a declaration that he was entitled to the fees and privileges appertaining to the Hiremath at Kamalapur by reason of his title to be called the Ayya of that Hiremath, and to obtain a perpetual injunction to restrain the defendant from using the name of "Ayya of Hiremath." The plaintiff's complaint was that the defendant had assumed a name to which the plaintiff had the exclusive right, and that that assumption would enable, as it had enabled, the defendant to attract to himself a large number of the plaintiff's followers, and thereby appropriate to himself fees, which would otherwise have been paid to the plaintiff.

Held, that it was a claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy certain privileges and honors at the hands of the members of the caste in virtue of that office. It was a caste question not cognizable by a Civil Court.

Held, also, that the fact that there had been no allegation of any specific damage by reason of the assumption by the defendant of the name of Ayya of Hiremath, and also the admission that after all the result of the assumption of that name would be merely to enable some of the followers of the plaintiff to go over to the defendant showed that what the parties had been fighting for was merely a question of dignity under the cover of a religious office. If the

* Second Appeal No. 133 of 1909.

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Court were to interfere in such cases, it would be merely assisting one party at the expense of the other and compelling the caste or the sect to follow one spiritual leader in preference to another.

APPEAL from the decision of A. D. Brown, Assistant Judge of Dharwar, confirming the decree passed by R. G. Bhadbhade, First Class Subordinate Judge at Dharwar.

Suit to obtain a declaration that the plaintiff being the *Ayya* of the *Hiremath* at Kamalapur was alone entitled to the fees, &c., of *Hiremath* and for a perpetual injunction restraining the defendant from using the surname of *Hiremath*.

There was at first no *math* at Kamalapur. The people of the village therefore repaire d to the adjoining village of Malapur and paid their respects to such *Ayyas* there as they chose. Latterly the people fou nded a *math* and installed a predecessor of the plaintiff as the *Ayya* of the *Hiremath*. It appeared that a second *math* was star ted and a predecessor of the defendant was installed as its *Ayya*.

In 1905, the plaintiff filed this suit.

The Subordinate Judge found that the subject matter of the suit could be adjudicated upon, excepting as regards the declaration about the privileges and dignities attached to the *Hiremath*. He further held that the plaintiff's claim was time-barred: and that the plaintiff w as not entitled to any relief.

On appeal the lower appellate Court came to the same result, holding that the suit was maintainable in a Civil Court, that the plaintiff was not entitled to the office of *Ayya* of *Hiremath* at Kamalapur; that the claim was not in time; and that the defendant had the right to use the surname *Hiremath*.

The plaintiff appealed to the High Court.

Jayakar with *M. B. Chaubal*, for the appellant.

Branson with *D. A. Khare*, for respondents Nos. 1, 2, 4 and 5.

CHANDAVARKAR, J.:—This was a suit brought by the appellant to obtain a declaration that he was entitled to the fees and privileges appertaining to the Hiremath at Kamalapur by reason of his title to be called the Ayya of that Hiremath, and he asked for a perpetual injunction to restrain the defendants from using the name

"Ayya of Hiremath". The Subordinate Judge, First Class, at Dharwar, who tried the suit, raised several issues, the first of which was: "Whether the matter in dispute in this suit cannot be adjudicated upon by a Civil Court." His finding upon that point was that the subject-matter could "be adjudicated upon excepting as regards the declaration about the privileges and dignities attached to the Hiremath." He held that, so far as those privileges and dignities were concerned, the question raised was one relating to "caste" within the meaning of the Bombay Regulation II of 1827, section 21.

In the appeal Court the learned Assistant Judge disposed of the case on the following issue: "Whether the plaintiff was entitled to the office of Ayya of Hiremath at Kamalapur." His finding on the evidence, on that issue, was in the negative. He held upon the evidence that the plaintiff had not proved an exclusive right to the name claimed by him.

Before us Mr. Jayakar in support of the second appeal contends that the issue raised and decided by the Assistant Judge had not been raised in the Court of first instance; and that the suit, having been brought by the plaintiff owing to the usurpation by the defendants of a name to which the plaintiff alleged he had an exclusive right, fell within the jurisdiction of the Court, on the well-known principle of law that an unauthorized use of the name of one person by another gives a cause of action to the former, where the use is calculated to deceive and inflict pecuniary loss.

Now, the law on the point so raised is clear. It has been laid down by the House of Lords in *Earl Cowley* v. *Countess Cowley*[1] where Lord Lindley at p. 460 says: "The law on this subject has been examined in a very instructive note from the pen of the late Mr. Waley in 3 Davidson's Conveyancing, pt. I, p. 283, 2nd Ed. The judgment of Tindal, C. J., in *Davies* v. *Lowndes*[2] and of the Privy Council delivered by Lord Chelmsford in *Du Boulay* v. *Du Boulay*[3] leave no doubt about it. Lord Chelmsford in *Du Boulay* v. *Du Boulay*[3] stated that 'in this country we do

(1) [1901] A. C. 450.

(2) (1835) 1 Bing. N. C. 597 at p. 618.

(3) (1869) L. R. 2 P. C. 430.

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not recognize the absolute right of a person to a particular name to the extent of entitling him to prevent the assumption of that name by a stranger.' ..... 'The mere assumption of a name which is the patronymic of a family by a stranger who has never before been called by that name, whatever cause of annoyance it may be to a family, is a grievance for which our law affords no redress.'"

The question, therefore, is whether any damages have been incurred or not. In examining the case from that point of view it must be remembered that, closely scrutinized, the plaint in the present case does not afford any clear indication that what was complained of was the user of a name by the defendant in a manner calculated to deceive any one. When we read the summary of the plaint as given by the Subordinate Judge, who tried the case in the first instance, it appeared to us that what the plaintiff complained of was trespass on plaintiff's property by the defendant. It appears that it was under that impression that the Subordinate Judge decided the first issue raised by him partly in favour of the plaintiff. But Mr. Jayakar has candidly admitted before us that, so far as any property is concerned, there has been no trespass by the defendants upon the plaintiff's right; that all that the plaintiff complains of is that the defendant has assumed a name to which the plaintiff has alone exclusive right; and that that assumption will enable, and has enabled, the defendant to attract to himself a large number of the plaintiff's followers and thereby appropriate to himself fees, which would have gone into his (plaintiff's) pockets. When the case is thus put, it resembles *Murari* v. *Suba*[1]. It is a claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy certain privileges and honours at the hands of the members of the caste in virtue of that office. That is a caste question, not cognizable by a Civil Court. The fact that there has been no allegation of any specific damage by reason of the assumption by the defendant of the name of Ayya of Hiremath, and also the admission that, after all, the result of the assumption of that name would be merely to enable some of the followers of the plaintiff to go over to the defendant, show that what the parties have been fighting for is

(1) (1882) 6 Bom. 725.

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merely a question of dignity under the cover of a religious office. If we were to interfere in such cases, we should be merely assisting one party at the expense of the other and compelling the caste or the sect to follow one spiritual leader in preference to another. We think, therefore, that the point raised by Mr. Jayakar, namely, that the suit is for damage incurred by his client by reason of the unauthorized use by the defendant of the name, to which the plaintiff alone is entitled, does not arise upon the pleadings.

On these grounds we confirm the decree with costs.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

1910.

February 22.

PIROJSHAH BIKHAJI AND OTHERS (ORIGINAL CAVEATORS NOS. 1, 2 AND 3), APPELLANTS, *v.* PESTONJI MERWANJI (ORIGINAL APPLICANT), RESPONDENT.*

Probate and Administration Act (V of 1881), section 81—Indian Succession Act (X of 1865), section 250—Will—Probate—Caveator—Interest possessed by the caveator.

The provisions of section 81 of the Probate and Administration Act, 1881 (which correspond with those of section 250 of the Indian Succession Act, 1865) enact that the interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person, that is, there should be no dispute whatever as to the title of the deceased to the estate, but that the person who wishes to come in as the caveator must show some interest in the estate derived from the deceased by inheritance or otherwise.

Abhiram Dass v. *Gopal Dass* (1) followed.

APPEAL from an order passed by E. J. Varley, District Judge of Surat.

Proceedings for probate.

This was an application by Pestonji to take out probate of a will made by one Meherwanji Bomanji.

* Appeal No. 28 of 1909.

(1) (1889) 17 Cal. 48.