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cause of ill-feeling in the caste. A meeting, purporting to be a meeting of the whole caste, was held at Malád, in Sálsette, on the 5th June, 1887. Several rules framed with the view of lessening these expenses were then passed. The fourth rule was as follows :—"The practice of bringing a *náikin* to sing in the *mandap* on the day of *munj* or marriage ceremony is to be put a stop to." The preamble to the rules contained the following clause :—"Every family in the caste is to act according to these rules, and if any transgression of these rules on the part of any one be proved, he shall be considered as an offender of the caste." Copies of these rules and their preamble together forming "the resolution" were printed and sent to the various divisions of the caste with a letter. The letter expressed the hope that the various sections would take steps to prevent the rules being transgressed The plaintiff and the defendants belonged to the Girgaum section of the caste. This section approved of the resolution and acted on it.

In May, 1888, the plaintiff's grand-nephew's *munj* was celebrated at the plaintiff's house, and the plaintiff, in breach of the above rules, employed a *náikin* to sing at it. On the 9th March, 1889, Dádobá Wáman, (defendant No. 6) who was secretary of the Girgaum section of the caste, wrote to the plaintiff, drawing his attention to his breach of the rules, and calling upon him to show cause, before the Girgaum section of the caste, why he should not be liable to censure, and why the *mán-pán* invitation to him by the caste should not be stopped. A correspondence then took place between the plaintiff and Dádobá Wáman, in which the plaintiff alleged that the rules in question had not been laid down by the whole body of the caste, and that they were frequently transgressed. He declined to pay any attention to communications on the subject. A meeting of the Girgaum section of the caste was then held, at which twenty-two members were present, and a resolution was passed, declaring that the plaintiff had transgressed the caste rules, and depriving him of the *mán-pán* invitation by the caste until a contrary resolution should be arrived at by the *Chárgaum* and *Desh*. It was also ordered that this resolution should be communicated to the *Chárgaum* (local divisions of the caste) and *Desh* (head-quarters of the caste), which subsequently accepted and approved of the resolution. The resolution thus became known to the whole caste.

The defendants were among the twenty-two members of the Girgaum section of the caste who passed the resolution. The plaintiff sued them, claiming Rs. 5,000 damages, alleging that they had passed the said resolution and circulated it among the caste, and complaining that they had "attempted to carry out the said resolution by preventing the usual *mán-pán* invitation being sent to the plaintiff, and the depriving of the plaintiff of this invitation is equivalent to excommunicating him from his community."

Held, that the circumstances, even assuming that the defendants were actively instrumental in getting the resolution carried, did not constitute a cause of action of which the Court could take cognizance. The plaintiff had not been libelled by the publication of the resolution. The facts stated in the resolution were all true, and the publication of true statements regarding an individual does not constitute a cause of action in a Civil Court, though, if the publication

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be unjustifiable, it may be an offence against the provisions of the Penal Code. The occasion, also, of the publication was privileged. The defendants were justified in informing the caste-fellows of the matter relating to the caste, which it was for the common interest of the caste to know. So far, therefore, as the suit was a suit for libel or defamation it failed.

Held, also, that the fact that the defendants had been actively instrumental in passing the resolution depriving the plaintiff of his *mán-pán* did not constitute a cause of action. The right to the invitation was not a legal right. It was a social privilege which caste usages only entitled a casteman to receive, and the caste was the only tribunal to which a casteman deprived of that privilege could resort. The question was a caste question unconnected with property or legal right.

Held, also, that the fact that the ru' ich the resolution enforced might be, in fact, *ultra vires* and one which the caste could not validly pass, did not operate to give the Court jurisdiction. As long as a caste in passing a rule confines the enforcement of it to social caste sanctions, and does not seek to deprive a man of property or legal rights for disobeying it, the Court has no jurisdiction to enquire into the nature of the rule. The Court cannot dictate to the caste what rules it shall and what it shall not lay down for its guidance. The rule in question was a sumptuary rule, and there was no reason why the caste should not enact it if it pleased.

Among the issues raised by the defendant on the pleadings were the following:—*viz.* (3) whether the rules were not duly approved and adopted by the caste; and (6) whether the publication of the resolution was not privileged. It was contended for the plaintiff that the burden of proving these issues was on the defendant, and that he (the plaintiff) might reserve his evidence on them until the defendant had given evidence upon them.

Held, that the *onus* of showing that the rules were not properly passed lay on the plaintiff.

THE plaintiff and the defendants were members of the Páthára Kshatria caste.

The plaintiff complained that on the 9th March, 1889, he received a letter signed by the sixth defendant, calling upon him to appear before the "*grámastha*" (the caste) and to show cause why, in conformity with a certain caste rule, he should not be regarded as an offender by reason of his having engaged the services of a "*náikin*" for singing purposes at the sacred thread investiture of his nephew's son, and why the "*mán-pán*" invitation to him by the caste should not be stopped.

The rule referred to was one of certain alleged "caste rules" relating to outlays on ceremonial occasions which were framed

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1887 by some of the members of a committee appointed by a club called "The Kshatria Union Club." One of those rules was as follows:—

"The practice of bringing a *náikin* to sing in the *mandap* on the day of the *munj* or marriage ceremony is to be put a stop to."

The plaintiff alleged that these rules had never been adopted by the caste and were not caste rules, and he contended that, even if these rules had been adopted and approved by a majority of the caste, (which they had not been), such majority would have no power to impose them on other members.

On receipt of the above-mentioned letter from the sixth defendant the plaintiff wrote, in reply, on the 11th March, 1889, stating that questions of outlay on such an occasion as was referred to were not matters subject to the authority of the caste; that they depended altogether on the pleasure of the individual; and that no one had any right to interfere. He denied that the rule referred to was a caste rule, and alleged that it had been frequently disregarded by members of the caste.

The plaintiff alleged that, notwithstanding this letter, a meeting was held on the 17th March, 1889, which was attended by the six defendants and sixteen other persons, and that a resolution was passed at the meeting by the defendants depriving the plaintiff of the "*mán-pán*" invitation by the caste, and directing that copies of the resolution should be sent to the *Desh* (head-quarters of the caste) and *Chárgaum* (local divisions of the caste). He further complained that the defendants had circulated this resolution among the caste and had attempted to give effect to it by preventing the usual "*mán-pán*" invitation being sent to him. He alleged that to deprive him of these invitations was equivalent to excommunication, and that by these acts of the defendants he had been much injured in character and reputation, and had been deprived of the society of many of his caste-fellows and friends. He claimed Rs. 5,000 damages.

The defendants filed a written statement. They contended that the questions involved in the suit were caste questions, as to which the Court had no jurisdiction; that the rules complained

of were not *ultra vires* of the caste, and were just and proper rules; that the rules had been adopted by the caste, and were valid and binding on its members; that the resolution referred to was passed at a properly convened caste meeting, and that the defendants voted *bonâ fide;* that whatever was done at that meeting was privileged; that the resolution was a proper one as a matter of caste discipline. The defendants denied that the resolution was equivalent to excommunication, or that it had caused him any damage of which the Court could take cognizance. They further submitted that, if the plaintiff had any cause of complaint against them, he should, in the first place, have appealed to the *Chárgaum* and to the *Desh* for redress; and they contended that all those persons who were parties to the passing of the resolution should be parties to the suit.

At the hearing the following issues were raised:—

1. Whether the questions involved in this suit are cognizable by this Court?

2. Whether the rules referred to are *ultra vires* of the caste?

3. Whether the rules were not duly approved and adopted by the caste?

4. Whether the resolution in the plaint referred to was passed by the defendants?

5. Whether the defendants published the said resolution?

6. Whether if so, the said publication was not privileged?

7. Whether the resolution was tantamount to excommunicating the plaintiff?

8. Whether the plaintiff has suffered the damage alleged in the plaint?

9. Whether plaintiff is entitled to the relief prayed?

10. Whether the publication of the said resolution was not defamatory of the plaintiff?

With regard to the issues, counsel on behalf of the plaintiff contended that the burden of proving issues 3 and 6 was on defendant. The plaintiff alleged there were no such caste rules, and he would reserve his evidence on those issues until the defend-

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ants have given evidence upon them. Counsel for the defendants, on the other hand, insisted that the burden of proof of those issues did not lie on the defendants. The plaintiff was bound to make out his whole case. They cited *Dawkins* v. *Antrobus* (1).

FARRAN, J.:—I think the onus of showing that the rules were not properly passed, lies on the plaintiff. The *factum* of the rules is proved by the plaintiff's letter of the 11th March referred to in his plaint, and also by the statement in the plaint that these rules were framed in 1887.

Lang and *Anderson* for plaintiff:—A serious injury has been done to the plaintiff. The defendants have published that the plaintiff has by his conduct infringed the rules of the caste. If the rule is not one which a caste can make, the caste cannot exclude a member from caste privileges for its infringement. The caste has no power to pass sumptuary laws, and enforce them by depriving members of social privileges. In such a case the Court is bound to interfere. The social privileges of which the plaintiff is deprived, are more valuable than property. There is no question here of religion or religious custom. This is merely an attempt to enforce a sumptuary law by caste machinery. They referred to Regulation II of 1827, section 21.

Latham (Advocate General), *Starling* and *Inverarity* for defendants:—A caste may properly deal with social questions. A caste decision on such a question gives no cause of action. Nor does the exclusion of the plaintiff from mere social privileges give a cause of action—*Joy Chunder Sirdár* v. *Ramchurn* (2); *Sudhárám Patar* v. *Sudhárám* (3); *Shankara* v. *Hanmá* (4). As to the alleged libel contained in the resolution, the statements are true, and there is no defamation: Odger on Libel, p. 170. The statements are privileged—*The Advocate General of Bombay* v. *David Haim Deváker* (5).

FARRAN, J.:—This is a suit to obtain the opinion of the Court upon the validity of certain caste rules and decisions. That is its real object; for, though it claims damages, it is clear that it

(1) L. R., 17 Ch. D., 615.
(2) 6 Calc. W. R. Civ. Rul., 325.
(3) 3 Beng. L. R., A. J., 91.
(4) I. L. R., 2 Bom., 470, at p. 473.
(5) I. L. R., 11 Bom., 185, at p. 193.

is impossible to weigh, in monetary scales, the loss which the plaintiff has sustained in being deprived of the social advantages of having the *mán-pán* invitation sent to him by his caste-fellows. The plaintiff would, I have no doubt, regard even a large sum as an inadequate solatium for the loss of that privilege. The facts have been very concisely put on the record, but I am probably in as favourable a position to deduce the legal consequences from them as if they had been elaborately detailed in evidence.

The parties belong to the Páthára Kshatria caste. Its original sect was at Málád, in Sálsette, but it has now many branches, and in Bombay its members are probably more numerous and influential than in Sálsette itself. In Bombay there are five local divisions comprised in the *Chárgaum*, besides some others not comprised in that body. The five are Girgaum, Mázgaon, Parel, Máhím and Worli. Each of these local divisions holds meetings of its own, and can pass resolutions. In respect of rules laid down by, or from the decision of, a local division, there is a right of reference or an appeal to the *Chárgaum*. The *Chárgaum* is composed of the five local divisions which I have named. From the resolutions of the *Chárgaum* there is, in like manner, a right of reference or an appeal to the *Desh*. The *Desh* is the community at head-quarters. Ordinarily it is composed of five villages in Sálsette meeting at Málád; but when it is desired to have a meeting of the whole caste, such a meeting is called at Málád only, and a decision passed at such a meeting properly convened is binding upon the whole caste.

In the year 1887 some members of the caste considered that the outlays made in connection with the *munj*, marriage and other ceremonies by the members of the caste were unnecessarily and unreasonably large, and that this was the cause of much ill-feeling and disturbance of good relations in the caste. A meeting, purporting to be a meeting of the whole caste, was held at Málád on the 5th June, 1887. Several rules framed with the view of lessening these expenses were then passed. These seem to be admirably adapted to the end in view. The fourth rule was as follows :—

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"The practice of bringing a *náikin* to sing in the *mandap* on the day of *munj* or marriage ceremony is to be put a stop to."

The reason of the rule was solely on account of the expense. The preamble to the rules contains the following clause:—

"Every family in the caste is to act according to these rules, and if any transgression of these rules, on the part of any one, be proved, he shall be considered as an offender of the caste."

Copies of these rules and their preamble together forming the resolution were printed, and sent to the various divisions of the caste with a letter. Three hundred of such copies were sent to the Girgaum division for distribution there. The letter impressed upon the Girgaum and the other sections the hope that they would take steps not to allow the rules to be transgressed.

The plaintiff and the defendant belong to the Girgaum division of the caste. The former does not admit that the above rules and resolutions were properly passed, and alleges that several sections of the caste have objected and object to them. What the plaintiff seems to suggest, is that the resolution was passed by a snatch vote, which did not express the real sense of the caste. However that may be, the evidence as to the validity of the resolution has not been gone into, though counsel felt themselves quite unable to refrain from putting in some on each side with a view to prejudice, I suppose; for it has been agreed that, at present, I am not to determine whether the resolutions were properly approved and adopted by the caste or not. What the exhibits prove is that the resolution was, in fact, passed, and a copy of it was sent to Girgaum with a view to its being acted on. That section approved it, and the defendants undoubtedly considered, and acted on, it as a valid resolution.

In May, 1888, the plaintiff's grand-nephew's *munj* was celebrated at the plaintiff's house, and the plaintiff, in breach of the rules which I have quoted, employed a *náikin* or *náikins* to sing at it. On the 9th March, 1889, the defendant, Dádobá Wáman, wrote to the plaintiff, drawing attention to his breach of the above rule, and calling upon him to show cause before the Girgaum branch why he should not be liable to censure and why the *mán-pán*

...d. The plaintiff
...not laid down by the
...nsgressed at many places
...ed by all. "Many persons,"
...hat it is beyond the jurisdiction
...to regulate the way in which, and the
... expenses should be incurred on ceremonial
...ns. How much and what outlay each man should make
...remonial occasions, depends on his will and his resources.
...not fair that a restriction should for any reason be placed
...ny one in such a matter. I also inform you that further
...nunications from you on the subject will not be attended

...the same day (11th March) a meeting of the Girgaum
...on was held, at which twenty-two members were present.
...esolution, of which the plaintiff complains, was there passed.
... referring to the rules, and the letter sent to the plaintiff
...his reply, and other letters sent to other persons and their
...es, it proceeds:—"The above letters having been read
...e the meeting, it is unanimously resolved that from their
... letters and from inquiries (made into the matter) it is
... that the above-named gentlemen," (of whom the plaint-
... one,) "have transgressed some of the rules of the caste,
... hey have in their letters despised the *gramasthas* (local
... s), the *gramasthas* have deprived them of the *mán-pán*
...on by the caste until a contrary resolution is arrived
...the *Chárgaum* and *Desh*. This resolution should be com-
...nicated to the *Chárgaum* and *Desh*, pránt Sháshti, and copies of the letters and of the resolution should be sent to the *Desh*' and copies should likewise be sent also to the *Chárgaum*."

The defendants were among the twenty-two *gramasthas* of Girgaum who passed the resolution. The defendant, Dádobá Wáman, and three other persons, who are not defendants, signed it. The plaintiff on the 1st April, by his solicitor's letter of that date, required the defendant, Dádobá Wáman, to furnish him with an authenticated copy of the proceedings of the meeting, with a list of the persons who moved the said defendant in the matter of calling it, and of those who attended it. The

letter conclude
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Upon this the defendant, D.
Girgaum section to ask for instruc
that he had done so. The meeting was
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a meeting of which was directed to be convened for th
April. The *Chárgaum* met on that day. It was then res
that there was no objection to let the plaintiff have a c
the resolution he asked for, and a committee was appointe
effect, to defend on behalf of the *Chárgaum* any action w
the plaintiff might bring in this Court. The resolution o
Girgaum division of the 11th March was approved, and
resolutions passed at the meeting of the *Chárgaum* were dir
to be sent to the *Desh* in Sálsette. This was done by th
fendant, Dádobá Wámaṇ, on the same day, and the *Desh* se
account of the proceedings to the different sections of the
in Sálsette, and the resolutions of the 11th March thus be
known to the whole caste. On the 18th April, 1889, th
fendant, Dádobá, replied through his solicitor to the pla
letter of the 1st April, and sent him a copy of the res
which he had asked for, as well as of the subsequent proc
which I have referred to. The plaintiff on the 10th Mar
filed this suit, claiming damages from the defendants in
of Rs. 5,000.

The defendant, Dádobá Wámaṇ, is the secretary
Girgaum section and of the *Chárgaum*. The other defendan
took part in passing the resolution of 11th March, 1889, and in
the proceedings subsequent thereto. The plaintiff alleges that
the defendants "passed" the resolution on the 11th March
and that they caused the said resolution to be circulated among
the members of the caste. The plaint also alleges as follows:—
"The defendants have also attempted to carry out the said
resolution by preventing the usual *mán-pán* invitation being
sent to the plaintiff, and the depriving of the plaintiff of the invit-
ation is equivalent to excommunicating him from his com-

departure from the recognized head-dress, or to compel its members to dwell in cadjan thatched houses, and as long as it only enforced its rule by refusing to ask the casteman guilty of its breach to dinner, he would be without redress, saving in a caste tribunal. It would be a caste question. To award damages to a plaintiff, who complained of the enforcement of such a rule, would be, in effect, to dictate to the caste what rules it shall, and what it shall not, lay down for its guidance.

As to the rule in question, if I have the power to determine upon it, I have no doubt but that it is within the powers of the caste. The caste is a social combination, the members of which are enlisted by birth, not by enrolment. Its rules consist partly of resolutions passed from time to time, but for the most part of usages handed down from generation to generation. The caste is not a religious body, though its usages, like all other Hindu usages, are based upon religious feelings. In religious matters, strictly so called, the members of the caste are guided by their religious preceptors and their spiritual heads. In social matters they lay down their own laws. Sumptuary laws are laws that concern social matters in one aspect, and like all other social laws are liable to be changed from time to time. The rule in question is of that nature, and I see no reason why the caste should not enact it if it pleased, merely because, as argued by Mr. Anderson, the Legislature at present considers such matters not to be within its province. It has not always been of the same mind even as to that. It would be rash to predict that it will always continue so.

I find on the issues:—1, except as to the claims based on libel, that the questions involved in this suit are not cognizable in this Court; 2, in the negative, assuming that I have jurisdiction to decide it; 3, no finding; 4, in the negative; 5, in the affirmative; 6, in the affirmative; 7, in the negative; 8, no finding; 9, in the negative; and 10, in the negative. It is useless to hear further evidence upon the points which have not been decided. The suit will be dismissed with costs, including costs reserved.

Attorney for the plaintiff:—Mr. *Mirzá Husen Khán.*

Attorneys for the defendants:—Messrs. *Tyabji and Dayábhái.*