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on ceremonial occasions are mere gratuities. They are customary payments for services though they may not be fixed. As pointed out in *Vijal Krishna Joshi v. Anant Ramchandra*<sup>(1)</sup> they need not be fixed. They may vary within certain limits, which, though not defined, are usually well understood and recognised. The trial Court refused to grant any injunction but allowed relief to the plaintiffs on the lines accepted in the decisions relating to the village Joshis. I think that under the circumstances that was the proper decree.

I would, therefore, reverse the decree of the lower appellate Court and restore that of the trial Court with costs in this Court on the respondent. Each party to bear his own costs in the lower appellate Court.

CRUMP, J.:—I concur.

*Decree reversed.*

R. R.

<sup>(1)</sup> (1874) 11 Bom. H. C. 6.

## APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt, Chief Justice.*

NURMAHOMED GULAM RASUL (ORIGINAL PLAINTIFF), APPELLANT v. THE SURAT CITY MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT<sup>o</sup>.

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*District Municipal Act (Bom. Act III of 1901), section 151 (1)—Use of property for a lime kiln—Nuisance—Municipality to determine whether the use is or is likely to be a nuisance—Power of the Court to interfere with the discretion of the Municipality.*

The use of property for the purpose of a lime kiln would be a nuisance within the meaning of section 151 (1) of the District Municipal Act (Bom. Act III of 1901) and under that section it is the Municipality who is to

<sup>o</sup> Second Appeal No. 101 of 1918.

judge whether the use is or is likely to become a nuisance to the neighbourhood. The Courts will not interfere with the exercise of that power unless it can be shown that it is exercised in an improper manner.

SECOND appeal against the decision of W. Baker, District Judge of Surat, reversing the decree passed by P. C. Desai, Joint Subordinate Judge at Surat.

Suit for a declaration.

The plaintiff was the owner of a lime kiln situated on land near the Variavi Gate at Surat,

On the 11th November 1914, a notice was served by the defendant Municipality on the plaintiff under section 151 of the Bombay District Municipal Act, 1901, requiring him to stop working the said kiln on the ground that it was likely to cause nuisance.

The plaintiff, therefore, brought a suit for a declaration that the order of the defendant Municipality was illegal and oppressive and for a permanent injunction restraining the defendant from interfering with the plaintiff in carrying on his work in the lime kiln.

The defendant Municipality considered that the plaintiff's kiln was situated near the inhabited quarter of the city; that the smoke, &c., issuing from it was causing and was likely to cause injury and nuisance to the inhabitants of that locality; that on enquiry the defendant's Health Officer and Chief Officer had formed that opinion; and that the action taken by the defendant was within the power conferred on it by the Statute.

The Subordinate Judge held on evidence that the use of the plaintiff's kiln was not a nuisance to the neighbourhood by reason of its situation and therefore the defendant Municipality was wrong in ordering the plaintiff in closing the lime kiln under section 151 of the District Municipal Act, 1901. He granted the injunction prayed for by the plaintiff.

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On appeal, the District Judge held that the Municipality on proper inquiries had found that the use of the lime kiln was a nuisance and under section 151 of the Bombay District Municipal Act, a discretion was vested in the Municipality and that discretion not having been shown to have been exercised in a wanton or capricious manner, the Court had no jurisdiction to interfere with the order of the Municipality. He, therefore, reversed the decree and dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

*G. N. Thakor*, for the appellant.

*Government Pleader*, for the respondent.

MACLEOD, C. J.:—The plaintiff is the owner of a lime-kiln situated on land near the Variavi Gate at Surat. On the 11th November 1914 a notice, dated the 28th October, was served by the defendant Municipality on the plaintiff under section 151 of the Bombay District Municipal Act, 1901, requiring him to stop working the said kiln on the ground that it was likely to cause a nuisance. The plaintiff, therefore, has brought this suit for a declaration that the order of the defendant Municipality was illegal, wanton, capricious and oppressive, and for a permanent injunction restraining the defendant from interfering with the plaintiff in carrying on his work in the aforesaid kiln and costs. The trial Court decreed that the plaintiff's kiln was not a nuisance within the meaning of section 151 (1) of the Bombay District Municipal Act, which the Municipality had a right to order to be discontinued.

The District Judge, on appeal, reversed that decree and directed that the plaintiff's suit be dismissed with costs. It is quite obvious from the judgment of the trial Judge that he looked at the case from an entirely

wrong point of view. Section 151 of the Bombay District Municipal Act, 1901, comes under the heading "Nuisance from certain trades and occupations." One of those trades or occupations is the use of property for the purpose of a lime-kiln. So that we must take it that a lime-kiln in the view of the Legislature might be a nuisance, and the section gives the Municipality power, if it be shown to their satisfaction that any place used for the purpose of a lime-kiln is, or is likely by reason of such use and situation to become, a nuisance to the neighbourhood, or is so used, or situated as to be likely to be dangerous to life, health or property, by written notice to require the owner or occupier at once to discontinue the use of, or at once to desist from carrying out or allowing to be carried out the intention to use any such place for the purpose of a lime-kiln. Therefore if there is a lime-kiln within the limits of the Municipality, they are the judges as to whether it is, or is likely to become, a nuisance to the neighbourhood, and the Courts will not interfere with the exercise of that power unless it can be shown that they have exercised it in an improper manner. It is only for the purpose of seeing whether the Municipality has exercised its power in the proper way that the Court will consider the evidence to see what steps the Municipality took before they issued the notice, and in this case the notice was issued on the strength of a report from the Health Officer, and if the Health Officer reported that this lime-kiln was, or was likely to become, a nuisance, how can it possibly be said that the Municipality acting on his report were acting in a manner not recognised by law? I agree entirely with what the learned appellate Judge says on this question. It is not for the Court to deal with the questions whether what is complained of by the Municipality has been or is likely to be a nuisance, and to consider

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whether as a matter of fact that particular use of land within the Municipal limits is a nuisance or is likely to become a nuisance to the neighbourhood. Therefore I am in entire agreement with the decision of the learned District Judge and the appeal must be dismissed with costs.

*Decree confirmed.*

J. G. R.

### APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Heaton, and Mr. Justice Shah.*

1919.

December 19.

FAKIRAPPA LIMANNA PATIL (ORIGINAL DEFENDANT), APPELLANT v. LUMANNA BIN MAHADU DHAMNEKAR (ORIGINAL PLAINTIFF), RESPONDENT<sup>o</sup>.

*Limitation Act (IX of 1908), Article 44—Minor—Ward—Guardian—Alienation by natural guardian of minor—Suit to set aside alienation—Limitation.*

A Hindu minor on his attaining majority cannot sue to recover possession of property transferred by his mother acting as his natural guardian during his minority without suing to set aside the transfer within the period of limitation provided by Article 44 of the Limitation Act.

N mortgaged his property to defendant's father in 1877. After his death, his widow S, as natural guardian of his minor son, sold the equity of redemption to the mortgagee in 1891, without necessity. The son attained majority in 1895 and died in 1901 leaving a widow.

S died in 1906, and the son's widow died in 1908. In 1916, the plaintiff, the next reversioner, sued to redeem the mortgage :—

*Held*, that the suit was barred under Article 44 of the Indian Limitation Act, 1908, for the son ought to have sued to set aside the alienation within three years of his attaining majority.

Per SHAH, J. :—The scope of Article 44 is not limited to sales by guardians who are appointed under testaments or by the Court. The language of the Article is general and wide enough to include sales by natural guardians, who

<sup>o</sup> Second Appeal No. 636 of 1918.