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within the meaning of clause 15 of the Letters Patent. If this is the true effect of such an order, I am unable to see that the mere fact that the learned Judge varied it by the order in question and fixed a date for sale of the partnership assets, proposed by the parties by consent, would amount to a "judgment" within the meaning of clause 15 of the Letters Patent. Every interlocutory order would, in a loose sense, affect a right of some of the parties or impose a liability on others. But to hold that if some right, however unsubstantial it may be, is affected by an interlocutory order made by the Court, the order would be appealable, would, in my opinion, lead to an absurd position. What is to be looked at in such cases is the substance of the matter and the importance of the order made. I hold, therefore, that the order in question is not a "judgment". The preliminary objection, therefore, must be upheld and the appeal must be dismissed.

Attorneys for appellant : Messrs. *Wadia, Gandhi & Co.*

Attorneys for respondents : Messrs. *Merwanji, Kola & Co.* : Messrs. *Sahiar & Co.* : Messrs. *Payne & Co.* : Messrs. *Wadia, Gandhi & Co.* : Messrs. *Edgelow, Gulabchand, Wadia & Co.* : Messrs. *Mulla & Mulla.*

Appeal dismissed.

B. K. D.

APPELLATE CIVIL.

FULL BENCH.

Before Sir John Beaumont, Chief Justice, Mr. Justice Rangnekar and Mr. Justice Nanavati.

NAGINDAS NARANDAS LAVAR (ORIGINAL DEFENDANT No. 1), APPELLANT
v. SOMNATH PREMCHAND LAVAR AND ANOTHER (ORIGINAL PLAINTIFFS),
RESPONDENTS.*

Bombay Regulation II of 1827, section 21 (1)—Civil Procedure Code (Act V of 1908), section 9—Suit to enforce right to inspect accounts and papers of a caste—Suit of Civil nature—Caste question.

The plaintiffs who were members of the Lodha section of the Lohar Caste of Hindus at Ahmedabad filed a suit against the defendants, who were the managers of the caste

*Second Appeal No. 157 of 1929.

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property, for a declaration that they as well as every other member of their caste had a right to inspect and to take copies of the account books, documents and resolutions of the caste and for an injunction restraining the defendants from preventing the plaintiffs from exercising their right. The defendants contended that the civil Court had no jurisdiction to try the suit as the subject matter in suit was a caste question. The lower Courts, however, held that the civil Court had jurisdiction to try the suit and decreed plaintiffs' claim.

On appeal :

Held, confirming the decree. (1) that in the absence of any valid rule made by the caste upon the subject, the plaintiffs as members of a particular sect of the Hindu caste to which they belonged were entitled at all reasonable times and after a proper demand to enforce the right claimed by them against the defendants who were managers of the caste property ;

(2) that the subject matter of the suit was not a caste question under section 21 (1) of Bombay Regulation II of 1827 and that therefore the civil Court had jurisdiction to try the suit.

Haroon v. Haji Adam,⁽¹⁾ followed.

Jethabhai Narsey v. Chapsey Coocerji,⁽²⁾ commented on.

FACTS are sufficiently set out in the judgment of the Court.

H. V. Divatia, for the appellant.

R. J. Thakor, for the respondents.

BEAUMONT, C. J. :—This is a Second Appeal from the decision of the Assistant Judge of Ahmedabad. The plaintiffs, who are respondents on the appeal, are members of the Lodhagada section of the Lohar caste, and they sued for a declaration that they have a right individually to inspect the accounts and documents of the caste. The defendants are the managers of the caste ; presumably (though there is no evidence on the point) the caste properties are vested in them, but certainly they are the managers of the caste property. The learned trial Judge held that the plaintiffs were entitled at all reasonable times and after proper demand to a right of inspecting the documents of title about the caste property and all accounts, papers and vouchers regarding the management of defendant No. 1 who is the principal manager ; and that judgment was upheld by the Assistant Judge on appeal.

⁽¹⁾ (1909) 11 Bom. L. R. 1267.

⁽²⁾ (1909) 34 Bom. 467.

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Mr. Divatia for the appellants takes a preliminary point that this is a caste question, and that the Court has no jurisdiction to entertain the suit. I quite agree that this Court does not interfere in the internal management of a caste, and I also agree that it is competent for the caste to make rules regulating the rights of members of the caste to inspection of caste documents. But I am not prepared to agree that the whole question of the right of members of the caste to obtain accounts from their trustees and to inspect caste documents is a caste question. As at present advised I should say that a rule which purported entirely to exclude the members of the caste from any right to inspect documents, and which endeavoured to free the trustees from any obligation to account would not be valid. In the case of this caste we are told that there are no rules, and we must deal with the case on that footing. Unless the appellant can go as far as to say that the rules might exclude the plaintiffs' claim to inspection altogether, I think it is impossible to say that this is a pure caste question.

Mr. Divatia has referred us to the various authorities upon the point, and they are really very few. There are two cases reported in 11 Bombay Law Reporter, and those are the only cases which in my view have any bearing on the subject. The first is *Jethabhai v. Chapsey*,⁽¹⁾ and Mr. Divatia relies on certain passages in that judgment. It is the judgment of a Division Bench, and the judgment has certain peculiar features. The plaintiff in that case was claiming inspection of certain caste documents, and he claimed that right in various capacities. The learned Judges held in the first place that the plaintiff was not a trustee of the general properties of the caste, that he was only a trustee of two particular funds known as the Derasar and Sadharan funds, and they say therefore that the question narrows itself into this: Whether the plaintiff is entitled to claim inspection (a) in his character of a trustee of the Derasar and Sadharan

⁽¹⁾ (1909) 11 Bom. L. R. 1014; 34 Bom. 467.

funds or (b) in his character as member of the managing committee or (c) in his character as a member of the caste. They then say that it was not disputed by the plaintiff's counsel that his claims under (b) and (c) were governed by the rules of the caste, and that those rules excluded the right of inspection. But notwithstanding that the learned Judges proceed to consider what right the plaintiff would have had as a member of the caste to inspection, if the rules had not excluded any right. They then deal with heading (a) and they hold that as trustee of the Derasar and Sadharan funds the plaintiff had no right to inspection, either at law or under the rules. That, one would have thought, would have disposed of the suit; but not so. The learned Judges then proceed to consider whether, if the rule, instead of providing that the plaintiff should have no right of inspection, had purported to give him a right of inspection, he would in that event have had a right of inspection, and they hold that he would not. They then proceed to consider whether, if the plaintiff had possessed the rights which they hold that he did not possess, he demanded them from the proper quarter, and they hold that he did not. They then proceed to consider the question whether if the plaintiff had possessed the rights which he did not possess, and had demanded them from the proper quarter, which he did not do, there was a refusal or denial by the defendant such as would justify the suit, and they hold that there was none. They then at page 1029 say :--

“There now remains the single point, whether this is a caste question and so beyond the jurisdiction of the Court”

and they hold that the question must be answered in favour of the defendant, and that the Court had no jurisdiction to entertain the suit, and that the difficulty could not be cured under section 151 of the Civil Procedure Code.

Now I find it a little difficult to say what weight is properly to be attached to the opinions of learned Judges upon hypothetical questions of law, which do not arise upon the

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facts, in an action which the learned Judges hold they have no jurisdiction to try. I apprehend that opinions of that nature, although they may be of assistance in showing us what view the learned Judges would have taken had the questions properly come before them, cannot be regarded as of binding authority.

Two of these expressions of opinion upon hypothetical questions are relied on by the appellant in this case. The first is the opinion which the learned Judges expressed as to the rights which the plaintiff would have enjoyed as a member of the caste if the right had not been excluded, as it was, by the rules, and the learned Judges say this (p. 1023) :—

“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.”

Well, whatever a Hindu caste may be, it is certainly not either a corporation or a partnership, and therefore one cannot expect to derive very much help from the law on those subjects in dealing with a question of caste. But if the learned Judges intended to say that a caste is not to be dealt with, so far as relates to its property, in accordance with the ordinary principles of English law as applying to British India, I should then venture to disagree. Many such principles clearly apply ; for example, the principle that the Court does not interfere in the internal management of an autonomous body is a principle very well-known in English company law, and the qualification upon that principle as applied to castes which was expressed by Mr. Justice Farran in the case of *Nemchand v. Savaichand*,⁽¹⁾ to the effect that that principle will not apply if the majority is in effect robbing the minority, is again a principle well-known in English law, and is usually referred to by reference to the case of *Menier v. Hooper's Telegraph Works*.⁽²⁾ I think myself

⁽¹⁾ 5 Bom. 84 n. decided in 1866.

⁽²⁾ (1874) L. R. 9 Ch. 350.

that the nearest analogy to a caste in English law is a members' club. Of course a caste, regarded as a social organism, is very different from a club, but both institutions are unincorporated aggregates of individuals, associated together for purposes other than trade, and the legal consequences which flow from that position must, I think, apply to both bodies. I apprehend that if property belonging to a members' club is vested in trustees the members of the club, subject to any restriction imposed upon their rights by the rules, would be entitled to an account from the trustees and to inspect the documents relating to the property; and I see no reason why a similar obligation should not attach to trustees or managers of caste property.

The other passage in the judgment, which is relied upon, is the opinion which the learned Judges expressed as to the right of the plaintiff to inspect the caste documents if the rules had given him that right, which they did not do. At page 1026 the learned Judges say:—

“ . . . let us suppose that the rule does confer upon the trustees—that is, the trustees of the two funds, . . .—(the plaintiffs) 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.”

Mr. Divatia asks us to act upon this principle, and to refuse the plaintiffs relief, on the ground that, if we say that they are entitled to inspection of the caste documents at certain times or on certain conditions, the caste may make a rule altering that right. But the principle seems to me to be founded neither on reason nor authority. All that this Court can do is to deal with the plaintiffs' rights, as they exist today, and the fact that they may be altered in future cannot entitle us to refuse the plaintiffs relief. It frequently happens that shareholders in joint stock companies apply to the Court for declarations that they have certain rights under the Articles of Association and for an injunction to

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restrain the infringement of those rights, and the Court does not refuse to entertain such a claim merely because the company has a statutory right to alter its articles and may in that way in future defeat the plaintiffs' rights. The Court can only deal with the facts as they are when the case comes before the Court. If in this case the caste is going to make rules which will in effect make our order nugatory or partly nugatory, that is a matter with which we are not concerned. No such rules at the moment exist.

The other case is the case of *Haroon v. Haji Adam*.¹¹ I think the criticism which I ventured to make on the earlier case applies also to this case. Practically the whole judgment must be regarded as dicta. The learned Judge deals at considerable length with the question whether the plaintiff was entitled to accounts in respect of caste property and to inspection of documents and the conclusion he reaches is expressed at page 1279 where he says:—

“ . . . I feel no difficulty in holding that the plaintiffs and every member of the caste are at all reasonable times and on proper demand entitled to full and free inspection of all account books, papers and vouchers relating to the defendants' management of the Jamat properties in the defendants' possession and under their management.”

But he then goes on to hold that, although the plaintiffs have that right, it was conceded by the defendants before the filing of the suit, and he therefore dismissed the suit. He might have dealt with the whole suit very simply by saying that, assuming the plaintiffs possess the rights which they claim, those rights have not been denied by the defendants, and therefore there is no cause of action. However, speaking for myself, I think that the conclusion at which the learned Judge arrived in the passage which I have read is a correct conclusion, and it is on that passage that the learned trial Judge and the lower appellate Court based the order in this case. Agreeing as I do with that passage I agree also with the judgment appealed from and I think therefore that the appeal must be dismissed with costs.

¹¹ (1909) 11 Bom. L. R. 1267.

RANGNEKAR, J. :—The plaintiffs, who are members of the Lodhagada section of the Lohar caste, sued the three defendants, who were the Sheths or managers of the property of the caste, for a declaration that they as members of the caste had a right individually to inspect the accounts and documents etc., of the caste and for certain other reliefs. A question was raised in the trial Court as to whether the suit was a representative suit under the provisions of Order I, rule 8, of the Civil Procedure Code, and was decided in favour of the plaintiffs, and it is clear from the record that the decision is correct, although the fact that the suit was a representative suit did not appear from the title of the suit.

It seems to me, however, that when the question was raised, the learned Judge ought to have directed the plaintiffs, in accordance with the forms in Appendix A, Pleadings, Titles (1) of Suits, Civil Procedure Code, to amend the title so as to make it appear that the suit was filed under the provisions of Order I, rule 8.

Defendants Nos. 2 and 3 did not resist the claim of the plaintiffs. Defendant No. 1, however, contended that the Court had no jurisdiction to entertain the suit on the ground that the questions raised were "caste questions" within the meaning of the Bombay Regulation II of 1827, section 21. The learned trial Judge disallowed some of the claims put forward by the plaintiffs but allowed their claim as regards the right to inspection of the accounts and documents relating to the management of the property admittedly held by defendant No. 1 on behalf of the caste. In the lower appellate Court two issues only were raised, one being whether the subject matter of the suit was a caste question and whether the Court had jurisdiction to try it, and the other whether the plaintiffs individually had a right to see the accounts and the title-deeds of the property of the caste. The first issue was found partly in the negative and partly in the affirmative and the second issue was found

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in the affirmative. The first defendant now appeals against the judgment of the lower appellate Court and the question is whether the findings arrived at by the lower appellate Court are correct.

Mr. Divatia on behalf of the appellant says that the right to inspect the accounts and documents relating to the management of the property of the caste is a "caste question" and therefore the suit is barred under the Bombay Regulation II of 1827, section 21. That section, after stating that the jurisdiction of the civil Court extends to the cognizance of certain specified suits and generally of all suits and complaints of a civil nature, runs as follows :—

"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."

In the first place it is necessary to know exactly what is meant or understood by the expression "caste". The best description of "caste" is that, I think, which is given by Farran J. in *Raghunath Damodhar v. Janardhan Gopal*,⁽¹⁾ and it is in these words (p. 611) :—

"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."

The next point to consider is, what is a caste question? Now this is a difficult question and one not capable of an exact and definite answer. The difficulty is not solved by the decisions of this Court, some of which, I venture to think, are not easy to reconcile. But after considering the various cases, some of which have been brought to our notice by Mr. Divatia, I think, a "caste question" is, to use the words of Mr. Justice Ranade in *Appaya v. Padappa*,⁽²⁾

⁽¹⁾ (1891) 15 Bom. 599.

⁽²⁾ (1898) 23 Bom. 122 at p. 130.

a question which relates to matters which affect the internal autonomy of the caste and its social relations. I do not mean to suggest that this is an exhaustive definition, but I venture to think that as a working rule it is as good as any other which can be found in the reported decisions.

This brings me to the main question in this appeal as to whether the right claimed by the plaintiffs interferes with the autonomy of the caste. It will be seen from what a caste is as described by Farran J. that a caste manages its affairs and its properties by means of resolutions or rules which it makes from time to time or by usages handed down from generation to generation. In this case it was not suggested on behalf of the defendants that there were any usages which restricted the rights of the plaintiffs to an inspection of the accounts relating to the management of the caste properties. Nor was it suggested that there were any rules made or resolutions passed by the caste which stood in the way of the plaintiffs' claim. That being the position, I think the claim put forward by the plaintiffs must be decided on principles of general law as in any other ordinary case.

Now the evidence shows that the caste had certain property movable and immovable and that it was in the possession of and managed by defendant No. 1 who was the Sheth of the caste and the manager of the properties. Defendant No. 1, therefore, was bound to keep an account of his management of the properties which belonged to the caste, and it is not denied that such accounts are existing. The plaintiffs' case was that defendant No. 1 was mismanaging the property and therefore before taking any further action about it it was necessary to see the accounts. That being the position, it is difficult to see why the plaintiffs are not entitled to see the accounts. The same question arose before Mr. Justice Davar in *Haroon v. Haji Adam*.^ω It is undoubtedly true, as Mr. Divatia says, that the observations of the learned Judge on this point were not

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necessary for the decision of the real question in the case on which the suit was ultimately dismissed, and that some of them are *obiter dicta*. Even so, I respectfully agree with the opinion expressed by that learned Judge on the question which we have before us. The learned Judge said (p. 1271) :—

“The right to inspect account books kept in connection with caste funds and properties is not in any sense a caste-privilege. It is a legal right. It is preliminary to a right to assert a claim to property and is incidental to the right to recover property which may be lost to the caste by misuse or misappropriation.”

The learned advocate for the appellant contends that in the case before Mr. Justice Davar there was a regular trust-deed under which the defendants were appointed trustees and held the property as trustees. I am unable to see that the fact makes any difference to the question which arises in this appeal, because the first defendant was certainly holding the property on behalf of the caste, and even though the legal ownership was vested in him, the beneficial ownership of the property was in the caste, and therefore in the members constituting the caste. But even if the first defendant cannot be said to be an express trustee of the caste, I do not think that his position with reference to the question in the appeal differs in any manner from that of an express trustee.

Chapter IX of the Indian Trusts Act deals with certain obligations in the nature of trusts and consists of sections which run from 80 to 95. Section 80 states that an obligation in the nature of a trust is created in certain cases mentioned in sections 81 to 93 and then follows section 94, which runs as follows :—

“In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.”

Section 95 says :—

“The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far

as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it."

Now section 19 of the Indian Trusts Act runs as follows :—

" A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary to furnish him with full and accurate information as to the amount and state of the trust-property."

In my view, therefore, even if the first defendant who styled himself as the manager of the caste property is not an express trustee it is not open to him to refuse to show the accounts which he is bound to keep relating to the management of the trust property to the persons who ultimately are the beneficiaries in regard to that property.

Mr. Divatia says that it would be open to the caste to get over any decree which this Court may make by making rules with regard to the inspection of the accounts in question and that therefore the decree would be rendered nugatory or futile. All I can say is that we are not concerned with what may happen after a decree is made in this case nor with the question that it may be neutralised by some action on the part of the caste. All we are concerned with is to see if the plaintiff has a cause of action, and if so, to give him adequate relief with regard to that cause of action. I think that on the facts of this case the plaintiffs have a cause of action as they have a right to inspect these accounts, there being nothing to show that the caste had made any rules relating to the question of inspection of the accounts which, undoubtedly, speaking for myself, it is open to the caste to make.

Lastly Mr. Divatia relies upon *Jethabhai Narsey's* case⁽¹⁾ and certain observations of Mr. Justice Batchelor in that case. The case has been fully dealt with by my Lord the Chief Justice and I entirely agree with his opinion that the passages relied upon are *obiter dicta*, and though they may be entitled to respect they cannot assist us in this case, the facts of which are quite different from the facts which were

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⁽¹⁾ (1909) 34 Bom. 467.

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before the learned Judges who decided it. I think the case has been properly distinguished by the learned trial Judge and by the learned Judge of the lower appellate Court. In the result, therefore, I agree that the appeal fails, and must be dismissed with costs.

NANAVATI, J. :—I agree.

Appeal dismissed.

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Before Sir John Beaumont, Chief Justice, and Mr. Justice Broomfield.

MULJI HARIDAS v. Sir IBRAHIM RAHIMTULLA.*

Interlocutory injunction—Principles governing grant of such injunction—Bill of Act of Legislature—Declaration that such bill is ultra vires or that its provisions are void and inoperative—Injunction to restrain President of the Indian Legislative Assembly—Jurisdiction of High Court.

An interlocutory injunction can only be granted if the Court is satisfied that in all probability the declaration which is asked for in the suit and which is the basis on which the permanent injunction is claimed will be made when the suit comes to be tried.

The Court has no jurisdiction to restrain an act which inflicts no legal wrong upon the plaintiff.

Per Broomfield J. dubitante :—Whether the High Court has jurisdiction to grant an injunction against the President of the Legislative Assembly *qua* President, or to consider whether an enactment of the Central legislature is or is not *ultra vires*, merely on the ground of its being inconsistent with some other enactment of that legislature ?

NOTICE of motion for interim injunction.

Suit for a declaration and injunction.

The plaintiff, a merchant doing business in iron and steel in Bombay, filed this suit on October 26, 1931, against the defendant, who is the President of the Indian Legislative Assembly, praying for a declaration that clauses 3 and 4 of Bill No. 46 of 1931 which was introduced in the Legislative Assembly on September 29, 1931, were *ultra vires* or that

*O. C. J. Suit No. 2013 of 1931.