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referred to by Mr. Maine in illustration of his argument, or "conjecture" as he terms it "that private property, in the shape in which we know it, was chiefly formed by the gradual disentanglement of the separate rights of individuals from the blended rights of a community," and there is certainly nothing in the language used which would warrant us in presuming that in any particular village the present holders of land under separate puttahs are joint owners or have any such common interest in the land that the dispossession of any one gives a cause of action to all. We must therefore confirm the decision of the Civil Judge, but, as the defendants did not appear, without costs.

*Appeal dismissed.*

## Appellate Jurisdiction (a)

*Regular Appeal No. 21 of 1868.*

SYED AMIN SAHIB... .. *Appellant.*

IBRAM SAHIB and 5 others..... *Respondents.*

A suit by an Officer of a mosque, temple, or religious establishment for distraint from his office is not a suit for misfeasance within the meaning of Section 14, Act XX of 1863.

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**T**HIS was a Regular Appeal against the decision of O. B. Irvine, the Acting Civil Judge of Chittoor, in Original Suit No. 37 of 1866.

*G. E. Branson and Waddell*, for the Appellant, the plaintiff.

*Rama Row*, for the 1st, 2nd, and 3rd Respondents, the defendants.

The facts sufficiently appear from the following

**JUDGMENT** :—This is a suit to obtain restoration to the office of khatil of a mosque from which the plaintiff had been, as he alleged, wrongfully dismissed by the defendants who are the committee having the superintendence of the mosque under Act XX of 1863, and to recover damages for such dismissal.

(a) Present : Scotland, C. J., and Ellis, J.

In point of amount the suit was cognizable by a Court inferior in grade to the Civil Court, but, being considered a suit to which Section 14 of Act XX of 1863 applied, it was instituted in the Civil Court with the leave of the Court, as required by Section 18, and in due course issues were settled and the case brought on for final hearing. At the first hearing it was objected on the part of the defendants that the Act did not apply to the suit, and therefore the Court could not take cognizance of it, and the objection was overruled. But at the final hearing the objection was renewed, and on the authority of the case of *Agri Sharma Embrandi v. Vistnu Embrandi* 3, *Madras High Court Reports*, 198, the Civil Judge decided that Act XX of 1863 did not apply, and the Court therefore had no jurisdiction to hear the suit, and thereupon a decree was passed dismissing the suit from which the plaintiff has appealed.

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The general question raised for determination is whether a suit by an Officer of a mosque, temple, or religious establishment for dismissal from his office is a suit for misfeasance within the meaning of Section 14 of Act XX of 1883, and we are of opinion that it is not. The enactments in Sections 14 and 15 are enabling and intended to give to the persons described and who are individually not interested otherwise than in connection with others, the right to sue individually before the Civil Court "the member of any committee appointed under this Act for any misfeasance, breach of trust, or neglect of duty committed by such member of such committee in respect of the trusts vested in or confided to them respectively, and that it is to suits of that nature only that the leave of the Court is necessary under Section 18. We think misfeasance in this provision was simply used with reference to wilful acts of breach of trust, acts of a criminal nature; and that the provision applies to personal misconduct amounting to a breach of trust or neglect of duty by any member of the committee in respect of the property and endowments vested in the committee by Section 12, and of which they are by Section 13 required to keep regular accounts. It has no reference, we think, to acts done by the body of the committee in exercise of the authority which they possess to remove the

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officers and servants of a religious establishment, and appoint others in their stead. There may be a removal from an office on insufficient grounds, without any misfeasance, on the part of the committee, and an improper removal occasions an injury and loss in respect of which redress can be obtained only by the person dismissed, and to a suit for such redress, it is clear to us that Section 14 has no application—its sole purpose and effect, we think, is to enable persons to sue for the protection of the property, and the proper application and administration of the funds and affairs of the establishment in which they have a common interest.

This construction of Sections 14 and 15 of the Act is in accordance with the view taken not only in the case acted upon by the Civil Judge, but also in the case of *Chinna Ray Aiyangar v. Subbraya Mudally*—3, *Madras High Court Reports* 334.

In the course of the argument we were referred to Regular Appeal No. 85 of 1867, decided by this Court on the 17th February last, in which it was said the Court had on a similar question expressed an opinion contrary to that now entertained. We have referred to the judgment, and find that it was given on two totally different points, and the Chief Justice finds no mention in his notes of the argument of the point of jurisdiction having been urged. Besides the Civil Court had fully heard and decided that case on the merits.

For these reasons we are of opinion that the present suit was cognizable by a Court of inferior grade to the Civil Court, and that the Civil Court might on that ground refuse to hear and decide it. The decree therefore must be affirmed, but we think there should be no costs allowed.

*Appeal dismissed.*