that though the plaintiff had sustained damage the Commissioners had done no wrong, for they were only doing what was absolutely necessary to protect the interests which they were appointed to protect.

1870. *January* 18. *R. A. No.* 30 *of* 1869.

But into the question of whether the present case is one which falls within either of these classes we are not entitled to enter.

We are at present only on the question of whether a cause of action is alleged, not whether it can be sustained, and are not in a position to consider what are merely matters of defence. The decree of the Civil Judge must be reversed and the case remanded with directions to the Civil Judge to restore the suit to its original number in the Register and proceed with the investigation of it.

Appeal allowed.

Appellate Jurisdiction. (a)

Referred Case No. 57 *of* 1869.

MAADAN *against* ERLANDI.

The plaintiff sued to recover the amount of marriage fees which the defendant became liable to pay for the use of a temple upon the defendant's marriage with a woman residing in the village wherein the temple was situated by virtue of a long established custom.

Held, that, the existence of the alleged immemorial custom not having been established, the plaintiff was not entitled to maintain the suit.

Semble, that if the existence of the custom had been made out there would probably be an obligation to pay the fees claimed.

THIS was a case referred for the opinion of the High Court by C. Coonjan Menon, the district Munsif of Temalpuram, in Suit No. 547 of 1869.

1870. *January* 19. *R. C. No.* 57 *of* 1869.

The following was the case:—

This is a suit brought for the recovery of Rupees 2 with interest being the amount of marriage fees which, according to an alleged custom of long standing, defendant became liable to pay the temple of which plaintiff is the treasurer and manager, on his (defendant's) marrying a woman in December 1868 from the village wherein the temple is situated.

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

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1870. *January* 19. R. C. No 57. of 1869.

The defendant denied his liability, the plaintiff's power in the temple, and the alleged custom authorizing him to collect the marriage fees; and stated that he (defendant) had paid such fees, which constituted nothing more than a voluntary offering, to another temple.

The case was finally heard before me on the 29th day of November 1869, and a decree has been passed in favor of the defendant subject to the decision of the High Court upon the following case:—

The plaintiff and defendant are Hindu weavers and are inhabitants of the same village. The plaintiff alleges that the Màriyamma temple, of which he is the present treasurer and manager, was built by his ancestors for the common benefit of the weaver community of that village; that the whole of their community contributed for its support by making certain payments in the shape of offerings to the deity on the occasion of certain ceremonies such as marriages and the like; that the custom of so paying has obtained from time immemorial and has consequently established a prescriptive right in his favour to compel such payments when withheld. The evidence adduced in this case sufficiently establishes the above facts, but it also equally establishes that since some ten or fifteen years the weavers of that village have formed themselves into two hostile factions each having different temples for their worship and each supporting the temples in their respective possession, that the plaintiff and defendant belong to each of those factions, and that those belonging to one faction have not been since in the habit of making any offering to the temple in the possession of their adversaries. There has thus been an interruption in the usage asserted by plaintiff for the last few years, which I think will vitiate his alleged right of prescription. Again, such a custom as this has not yet been judicially recognized, and it is very doubtful to me whether the payment of a charity of this nature is compellable by action even if the custom of making such payment voluntarily be found to have existed uninterruptedly. According to the English law, I am clearly of opinion that it is not, being wholly without consideration; but under the Hindu law the case appears to me somewhat doubtful.

1870.
January 19.
R. C. No. 57
of 1869.

The questions for the decision of the High Court are :—

I. Whether a suit to compel payment of any voluntary offering to a Hindu temple is maintainable in law ?

II. Whether under the circumstances stated the plaintiff in this suit is entitled to recover the sum here claimed ?

No counsel were instructed.

The Court delivered the following

JUDGMENT :—There is no authority in Hindu law making the marriage fee claimed in this case due of common right, and the ground of immemorial custom upon which the plaintiff has based his claim of right, he has, we think, failed to establish.

A legal obligation to pay a due of this nature would probably be held to exist in a case in which the evidence showed presumptively that it had been customarily contributed from time immemorial by the community residing within a village for the enjoyment of the benefits attached to the right of worshipping in the temple and attendance at its ceremonials and the services rendered to them by the managers and other officers of the temple. In such a case there would be a consideration of advantage to which to ascribe the origin and continuance of the custom, sufficient probably to make it valid and binding.

But in the present case the existence of the alleged immemorial custom has not been proved so as to be binding upon the defendant. The fact that a section of the community of weavers of whom the defendant is one have for 10 or 15 years supported a temple of their own and altogether disconnected themselves from the plaintiff's temple, disproves the alleged liability. On this ground we are of opinion that the plaintiff is not entitled to recover the fee claimed.