

(1935) 01 BOM CK 0004
In the Bombay High Court
Case No : O.C.J. Suit No. 631 of 1933

Haji Abdul Razak Haji Mahomed

APPELLANT

Vs

Haji Adam Haji Usman Noorani

RESPONDENT

Date of Decision : 17-01-1935

Acts Referred:

Citation : AIR 1935 Bom 367 : (1935) 37 BOMLR 603 : 159 Ind. Cas. 650

Hon'ble Judges : Blackwell, J

Bench : Single Bench

Judgement

Blackwell, J.—The plaintiff is a member of the Cutchi-Memon Mahomedan Community of Bombay. The first defendant is and was at all material times the president of the managing committee of the jamat and of the jamat. The other defendants were at all material times members of the managing committee. The defendants are sued for themselves and as representing the jamat. The plaintiff sues for a declaration that a resolution of the jamat passed on January 15, 1933, excommunicating him is void and that he is and continues to be a member of the jamat and entitled to exercise all the rights and privileges of a member of the jamat, for an injunction to restrain the defendants and the jamat from obstructing the plaintiff from exercising his rights and privileges, and for damages.

2. The sixth defendant is dead, and by consent his name was struck off. Mr. Taraporewala, who appeared for the other defendants, raised issues on behalf of all of them other than the second and third defendants, and said that they would submit to the orders of the Court passed upon the determination of the issues as between the plaintiff and the other defendants.

3. The plaintiff is the uncle of Ismail Hasam. The latter's daughter Mariambai was in or about February 1932 betrothed to Mahomed Siddick, the son of Ahmed Haji Ebrahim, and was married to him on December 15, 1932. According to the plaintiff, he had been separate from his nephew Ismail Hasam for about twenty years; but as an elderly person in the family, he took part in the betrothal and

the marriage of Mariambai, and paid out of his own monies the laga payable on the betrothal in the name of his father and on the marriage in the name of his brother, who was the father of Ismail Hasam.

4. According to the plaintiff, the bride's health had not been good, and the bride's party suggested that the marriage should be postponed, but as the marriage had already been fixed, the bridegroom's party were not agreeable to postponement, and it was arranged that the marriage should take place, and that if the bride's health was not good on the day of the marriage, she should not be required to go to the bridegroom's house until she was better. This arrangement was not admitted by the bridegroom's party, as will hereafter appear.

5. On December 15, 1932, the day of the marriage, the bride's party went to the house of the plaintiff, and from there went with the plaintiff to the Lagansara, where the marriage took place. After the marriage, the bridegroom's father according to custom came for the bride, and the plaintiff himself handed her over to be taken to the room of the bridegroom in the Lagansara. She stayed there for some time, went out once or twice to answer calls of nature, as she was, according to her own account of the matter, suffering from dysentery, and later on the same night, she left the bridegroom's room, and returned to the rooms of her own party in the Lagansara. On the next day at about 3 p. m., she left with her father and sister for Mahim, and she did not thereafter return to her husband.

6. The bridegroom's father endeavoured to get Mariambai to go to her husband, but as he failed, he presented a petition dated December 24, 1932, to the president and members of the managing committee of the jamat, Exhibit A. " In this petition he states that on his asking for the custody of the bride, he was told that "Bai's health is not good ; she cannot descend the stair-case. We both the parties are, however, in one place of marriage ceremony, so please do not give much trouble to Bai. She will go to your house for a short-time and pay a visit". The bridegroom's father appears to have accepted this suggestion, for he says in the petition, "After knowing these facts, I caused the motor cars to be sent back, and some ladies from my side went and fetched Bai". The petitioner then goes on to describe the subsequent events on the night of the marriage, and states that the bridegroom's party were not informed till 11 o'clock the next night that Mariambai had gone to Mahim with her sister. Then the petitioner states the he made many efforts to fetch the Bai, and even went several times to the plaintiff at his house, but as he got no satisfactory reply from him, he went to the first defendant, who called a meeting of six or seven members of the managing committee on December 23, 1932. The plaintiff and Ismail Hasam were sent for, and an order was made by the managing committee that the petitioner and Ismail should go to Mahim and fetch the Bai to the petitioner's house. They went, but Ismail after some conversation with the Bai said that looking to her health, she was not in a position to go, and "Bai also in a very loud tone said that she would not go until her health was improved, and that she was unable to go".

The petitioner asked that arrangements might be made to send the Bai to the petitioner's house.

7. The only allegation in the petition against the plaintiff is that the petitioner went several times to the plaintiff's house, but that he got no satisfactory reply from him. There is no charge in the petition against the plaintiff. It is important to bear this in mind, because it was upon this petition that the plaintiff was excommunicated. Further, on December 23, 1932, the managing committee did not include the plaintiff in the order which they made.

8. A meeting of the managing committee was held on December 25, 1932, the minutes of which are Exhibit B. There was no written notice of that meeting, and the plaintiff was given oral notice the day before. The petition was read,, and the parties were called before the meeting. The plaintiff made a statement as follows :-

I do not know anything further in the matter. I have only discharged my duty. I have made expenses which were necessary in connection with the Bai's marriage. And after the day was fixed, Bai Bayabai daughter of Bhai Ahmed Haji Ebrahim had come to my residence to see my wife. At that time Bhai Ismail Hasam was also present at my house. My wife told Bai Bayabai that Bhai Ismail was saying that as the health of the Bai was not good, the marriage should for the present be postponed to another date. Thereupon, Bai Bayabai said : "In accordance with our custom we have already made an announcement amongst women ; it is not necessary to change the date. If at that time, Bai's health is not good, we shall come to-some understanding." Thereupon I prevailed upon Bhai Ismail to have the marriage; celebrated on the date fixed for it as desired by his "Vevais", and told him that all, will be well by the grace of God. And on the night of marriage, after the marriage (ceremony) was performed, I told Bhai Ahmed Haji Ebrahim that as Bai's health was not good, she should not be further troubled. Bhai Ahmed agreed to this. Thereafter, a man came to me from the ladies (and asked me) to go there and send the Bai away. I went upstairs and gave with my own hands whatever was to be given to the Bai and sent her away. Even at that time I was told by the ladies that. Bai's health was not good. But that as the ladies on the "Vevais" side wanted to-take her away, they would send her, if her health was a bit better. Thereupon I say, "it is a matter concerning you, ladies. You may do what is proper," After saying so, I went to my house at about twelve o'clock.

9. Ismail Hasam said that the statement made in the petition that the petitioner came to know at eleven o'clock at night that the Bai had gone to> Mahim was false, but that all the other statements made in the petition were correct. He protested that the meeting was unlawful upon the ground that the circular ought to have been issued three days previously. He stated that the Bai said that so long as her health was not right, she would not go to the house of her father-in-law. He asked for a month's time, and said that he would prevail upon the Bai, and send her after the month of Ramzan. The bridegroom's father objected, and

requested that a lady doctor or a nurse might be sent to examine the Bai. Ismail Hasam said that the Bai was not under his control, and would not allow herself to be examined by anybody, and that she said that she would not go even if she was threatened to be given talak.

10. Then the plaintiff was told that the request made by the bridegroom's father was reasonable, and that it would be better if he persuaded Ismail and got Mariambai examined by a lady doctor or nurse, and that then the jamat would consider the order to be made on Ismail's demand. In reply to this the plaintiff stated : " I don't know anything in this matter, and I do not want to say anything, but the request made by Bhai Ismail is reasonable."

11. Ultimately, the meeting passed a resolution that Ismail Hasam and the plaintiff should go with the petitioner and a lady doctor or nurse and get Mariambai examined, that the report of the examination should be submitted to the president by 4 o'clock the next day, and that if any obstruction was caused by any party and the examination was not allowed to be made, the president was authorised to order the manager to transfer the matter into a case; and the meeting was adjourned till December 27.

12. The adjourned meeting was held on December 27, 1932, the minutes of which are Exhibit No. 2. The plaintiff was not present, but a letter from him, part of Exhibit No. 2, was read. It appears from these minutes that on the previous day, December 26, the plaintiff and Ismail Hasam had gone to the/ president's house and had informed him that Mariambai refused to be examined. They were told that they had got up to four o'clock.. No medical examination took place, and the president ordered the manager to make out a case for disobeying the order of the jamat.

13. Ismail Hasam stated at this meeting that he had told the Sheth the day before that the Bai was unwilling to be medically examined, and that he said the same thing before the meeting.

14. The meeting resolved that a summons should be issued to the plaintiff and Ismail Hasam, and Mariambai to show cause why they should not be held to have committed an offence against the jamat for disobeying the order of the jamat. As regards the petition, Exhibit A, the meeting resolved that it should be turned into a case, and that both the cases should be taken up at a special meeting to be convened on December 30. The case in respect of disobedience to the order of the jamat was numbered 5 San 1351 Hijari while that in respect of the petition was numbered 6 San 1351 Hijari. The summons in respect of the petition is Exhibit D. The only particulars conveyed by it are in these terms :-" Re investigation of complaint by the complainant in respect of permission to take wife of his son". Both summonses were served on December 27, and were returnable on December 30. There was no three clear days" notice.

15. A meeting of the jamat was held on December 30, 1932, the minutes of which are Exhibit No. 3. The plaintiff was questioned as to what he had to say

with regard to the charge made against him for disobeying the order of the jamat, and he said :

As for myself, I have obeyed the order of the members ; even though when the order was read out to me, I asked Bhai Haji Joosab Noorani as to the reasons for compelling me to go with (them). Thereupon, Bhai Haji Joosab said that the said order was made by the managing committee and that they would not change it in any way. Now I believe that I have obeyed the said Order for Bhai Esmail came (to me) and told me that the Bai said that she would not allow herself to be examined by any "doctor or nurse. I immediately went to the Sheth, accompanied by Bhai Esmail, and thus, after going with the said Bhai, I made a report to the Sheth. Now, if the members think that I have committed a mistake in doing so, I am very sorry for that.

Asked as to what he had to say in reply to the charge, Esmail Hasam said that he accepted the order made against him, and tried to persuade the Bai to be medically examined, but she refused.. He produced a letter from the Bai, Exhibit E, which was read. The meeting held that as the letter had nothing to do with the jamat's case, further consideration of it should be postponed. After discussion the meeting held the plaintiff guilty of disobeying the order of the jamat by nine votes to one, and Esmail Hasam and Mariambai guilty unanimously. Then the meeting authorised the president to convene an urgent special meeting of the whole jamat the next day, and to put up the three offenders before that meeting.

16. The order having been read to the plaintiff and Esmail Hasam, the plaintiff stated that he preferred an appeal, and read rule 27. The president gave a ruling that the rules regarding appeals were not applicable to offenders of the jamat. The plaintiff further stated that fifteen days" notice should be given for a meeting of the whole jamat, but the president ruled that such a point had never been raised before the committee up to that day, and that whatever person disobeyed the order of the jamat should be placed before the jamat forthwith.

17. The letter from Mariambai dated December 30, Exhibit E, was a reply to the petition, Exhibit A, The principal points in the letter are as follows : She had been in her husband's room on the night of the marriage for an hour or a half or two, and as she was suffering from dysentery, she was given permission to go to her father's people in the Lagansara. Two or three days before the marriage, her father had told Bai Bayabai (the daughter of the bridegroom's father) that her health was not good, and that the marriage should be postponed, and it was agreed that the marriage should take place on the day fixed on the understanding that she should not have to leave her home until her health was good. She was married on December 15, and went to Mahim at 3-30 p.m., on the 16th. When the Sheth sent for her father and the plaintiff, the bridegroom's father said in the presence of several members of the managing committee that his son did not want to see the face of the girl and wanted divorce from her. As they wanted to divorce her, she did not want to get herself examined by a doctor appointed by them. When the president ordered her father to take the

bridegroom's father to his place and to give permission, and they came, she herself owing to her illness personally refused to go with them. She specified the ornaments which she had with her belonging to the bridegroom's people, and said that apart from those, she had not brought anything else with her.

18. A meeting of all the members of the jamat was held on December 31, 1932, the minutes of which are Exhibit No. 4. The agenda of the meeting and the papers relating thereto had not been kept available at the office of the jamat to enable the members to consider the same for fifteen days before the meeting. One of the members present, Mahomed Haroon Adam, said that on the night of the marriage of the son of one of the members, his wife ran away to the house of her parents, and that such an incident had not happened in their community for the last hundred or hundred and fifty years. He then stated what had happened in the matter, and said that the offenders had not attended but had written to say that the meeting then being held was illegal. The letters were read out, that from the plaintiff in which he said that the procedure adopted by the managing committee was unconstitutional in many respects, being part of Exhibit No. 4. At that stage the plaintiff attended and produced a letter asking for pardon for himself, which was as follows :-

I beg pardon from you, Bhais, on my behalf and on behalf of the members of my family for every fault of mine. I also ask for pardon on behalf of my nephew Esmail Hasam and also on behalf of his daughter. We also withdraw the letters which I and my nephew have written to the jamat.

19. The plaintiff also undertook to produce a letter from his nephew asking for pardon. After discussion, pardon was granted to the offenders unanimously. The letter which was received from Esmail Hasaffi and Mariarnbai dated the January 1, 1933, was in the following terms :

By this writing we admit to you, Bhais, that we have disobeyed the orders of the managing committee, for which we crave pardon from you, Bhais; we express sorrow and withdraw the letters written by us to the managing committee.

20. It is to be observed that up to this date the managing committee and the jamat had been concerned with the medical examination of Mariambai, and the failure of the plaintiff and Esmail Hasam to carry out the orders of the managing committee in regard thereto.

21. A meeting of the managing committee was held on January 6, 1933, the minutes of which are Exhibit F. The plaintiff received oral intimation of this meeting on January 3 at 10 p. m. He did not receive three clear days' notice. Case No. 6|51 was taken up, and the petition, Exhibit A, and Mariambai's letter, Exhibit E, were read. The bridegroom's father said that it was necessary to get the Bai medically examined. In reply to Mariambai's letter, Exhibit E, he said :

The statements made in the petition are absolutely false. After my demand for medical examination of the Bai is satisfied, I shall submit my arguments with

reference to the said petition.

22. The plaintiff was asked what he had to say as regards their proceeding with the case, and the following is an extract from the minutes as to what then took place :-

The aforesaid Bhai" (that is, the plaintiff) "stated as follows :-"I do not understand why I am involved in this case, for the said boy Bhai Ismail Hasam does not stay with me. For the last twenty years he is separate from me. Therefore I think that I am not concerned in this case. It is an universal law that for the offence of the son, his father or uncle is not to be punished." At this stage, Bhai Haji Abdul Razak was questioned by the meeting why he had not given that explanation when he was called before the meeting of the whole jamat. In reply to the said question, the said Bhai stated as follows :-"I was asked to attend the jamat (meeting) and ask for pardon, and I was told that what had happened had happened, and that if I asked for pafdon, the case would come to an end." Bhai Abdul Razak was asked by the meeting about the names of the said Bhais. Bhai Haji Abdul Razak refused to give the names of the said Bhais. A question was asked by the meeting as to what case, he thought, Would come to an end,-the case regarding the violation of the order of the jamat or the case regarding the complaint of Bhai Ahmed Haji Ebrahim? In reply thereto, Bhai Haji Abdul Razak stated as follows :-"I thought that both the cases would" come to an end, and for that reason, I had asked for pardon from the Bhais. My request was granted by the Bhais". It was further asked by the meeting why, when he himself believed that he was not involved in this case, he asked for pardon on behalf of the members of his family before the whole meeting. In reply thereto, the said Bhai stated as follows :- "I respected and acted according to the advice of the Bhais." (Then) the following question was put by the meeting, "Respecting whose advice, you asked for pardon." In reply Bhai Haji Abdul Razak stated that (he had respected the advice of) the whole jamat. It was stated on behalf of the meeting that he was not advised by the whole jamat to ask for pardon. In reply, Bhai Haji Abdul Razak Stated as follows : " If you, Bhais, find it necessary, I am prepared to give out the names," At this stage, Bhai Haji Abdul Razak was asked to give out the names of the Bhais, who had advised him to ask for pardon. Bhai Haji Abdul Razak stated that he did not think it proper to give the names.

23. Next Esmail Hasam was asked what he had to say regarding their proceeding with the case. He said :

I have nothing to state with regard to it.

Bai Mariambai has stated whatever there was to be stated in her petition dated 30-12-32.

24. Asked why Mariambai was not present, he said :

Bai Mariambai has stated in her petition that her health is not all right, and

therefore she cannot attend.

25. Later he said :

The Bai states that the petitioners have made it known that they have already given her talak (divorce), and asks why all this fuss for her attendance was made.

26. There was then a discussion as to whether there had been any talk about "talak", and certain members of the committee in whose presence the talak was alleged to have taken place said that there had been no such talk.

27. Thereafter there was a long cross-examination of Janmahomed Haji Allimahomed, the husband of Mariambai's sister, and of Esmail Hasam, which is immaterial.

28. After discussion, the meeting decided that in order to proceed with the case, it was necessary first to take the evidence of Mariambai, and as she was avoiding being present from time to time under the pretext of illness, the meeting resolved to order the plaintiff and Esmail Hasam to take with them a commission of five named members and a lady doctor and two women of the caste who would identify Mariambai, and to go to Mahim and get the Bai medically examined, and take her evidence, and that the evidence and the medical report should be submitted to the meeting on January 8, 1933, to which date this meeting was adjourned. On the order being read out to the plaintiff and Esmail Hasam, the plaintiff said that he was not concerned in the matter, and the family did not pay heed to his advice, and he asked that his name should be struck off.

29. It is to be noted that though this meeting was held to take up case No. 6|51, and the plaintiff stated that he had been separate from Esmail Hasam for twenty years, and was not concerned with the matter, and further that he thought that both cases would come to an end if he asked for pardon, the meeting concerned itself with the medical examination of Mariambai and the need for taking her evidence, and not with the merits of the petition, Exhibit A. The adjourned meeting was held on January 8, 1933, the minutes of which are Exhibit G. The plaintiff did not attend, but sent a medical certificate, Exhibit H, which was read to the meeting. The report received from the commission was also read, and was to the following effect : The plaintiff had not gone with the commission, but had sent word that he would not be able to attend as his health was not good. The members of the commission and two women and the lady doctor and Esmail Hasam had gone to Mahim, Mariambai was seated in a room with the doors bolted from inside. She was asked to open the door. She replied from the inside that as he had already given her a talak, she did not wish to see his face. She stated that under no circumstances would she allow herself to be examined by the lady doctor, and added that she would not show her face even to the two women sent by the jamat. She also said that she had stated in her petition the evidence which she wished to give, and that she did not want to give any further evidence. Consequently, the commission had to return without infilling their mission, " for Bai Mariambai point blank refused to get- her medically examined

and to give evidence. Further Bhai Esmail Hasam and Bhai Janmahomed Haji Alimahomed, who were present there, did not care to prevail upon the Bai or help us in any way in our work". For further consideration of the matter, it was decided to hold a special meeting on January 11, 1933, and to take up the matter then, and after a vote of thanks to the Chair, the meeting was dissolved.

30. A meeting of the managing committee was held on January 11, 1933, the minutes of which are Exhibit I. The plaintiff received oral intimation of this meeting on January 9. There was no three clear days' notice, and no written notice. Upon case No. 6|51 being taken up, there was first a discussion as to what ornaments and presents were with the bride, and what with the bridegroom's party. The committee then proceeded to review what had been stated by the plaintiff and Esmail Hasam, and Janmahomed Haji Alimahomed at the meeting on January 6, and the conclusion which they drew. They said that it was found that Bhai Esmail before his arrival at the Lagansara on the nikah day had put up with his family at the plaintiff's house, that all the usual ceremonies were performed at the house of Janmahomed under the guidance of the plaintiff, that such ceremonies as the fixing of the date of the marriage et cetera were performed by the plaintiff at his house, that the plaintiff while paying the laga in connection with the betrothal got it credited in the name of his father, and while paying the laga in respect of the marriage date and the nikah got it credited in the name of his brother, and that looking to the above facts they came to the conclusion that the plaintiff had made an effort to show that he was separate from Bhai Esmail, and that that was not believable. They said that they found the attitude of the plaintiff and Bhai Esmail to be evasive, and they thought it proper to get the Bai medically examined and to take her evidence, and appointed a commission, and ordered the plaintiff and Bhai Esmail to arrange to bring the business of the commission to an end. They said that the plaintiff did not appear before the commission on account of illness, that Bai Mariambai was sitting in the room with the doors bolted from inside, and flatly refused to be medically examined or to give evidence, and that though Bhai Esmail and Janmahomed were present, they did not even care to prevail upon the Bai or help the commission in their work. They further said that in the annals of their caste extending over about two hundred years, there had not happened a single incident of such a nature as had happened in the case of Bai Mariambai, that when the people on the Bai's father-in-law side asked for her, the guardian of the Bai put forth pretext of her illness, and did not pay any heed to the demands of these people and the jamat, that over and above that one Vadil (elder) tried to show that he was altogether separate, while another guardian showed his helplessness and threw all the blame on the Bai, and the Bai did not pay any heed to the orders of the jamat. They said that if in this manner the guardians of girls were to forego their responsibility, it would be a matter for consideration as to what would be the value of future marriage, and what would be the lot of the jamat.

31. They concluded their review of the matter as follows :-

Upon taking into consideration the change made in the names of Bhai Haji Abdul Razak Haji Mahomed Arabi at the time of paying the cess of betrothal and marriage of the Bai and the leading part played by him in his own house as a "Vadil" (elder) as well as in the jamat from the beginning to the end, and his subsequent strange attitude, and the part taken by Bhai Ismail Hasam Arabi as father under the guidance and advice of Bai Haji Abdul Razak and the act of taking of the Bai to the house of his son-in-law Bhai Janmahomed Haji Alimahomed, giving an excuse of the Bai's illness, and further taking into consideration the protection given to the Bai by Bhai Janmahomed Haji Alimahomed and the impertinent conduct of Bai Mariambai towards the jamat, etc, the committee is of opinion that Bhai Haji Abdul Razak Haji Mahomed Arabi, Bhai Ismail Hasam Arabi, Bhai Janmahomed Haji Alimahomed, and Bai Mariambai must have as between themselves arranged that after the marriage, Bai Mariambai should be made to run away at once, and they must have conspired from the beginning, to help one another in that connection. They have thereby played false to the petitioner Bhai Ahmed Haji Ebrahim and have injured his prestige as well as the prestige of the jamat.

32. The managing committee, therefore, resolved that the plaintiff and Esmail Hasam and Janmahomed had committed an offence against the jamat by removing Bai Mariambai soon after her marriage, and by aiding and abetting; one another in the said offence.

33. They also held that as Bai Mariambai without the permission of the people on her father-in-law's side ran away with her elders just after the performance: of the nikah, and did not obey the jamat, she also had committed an offence "J against the jamat.

34. The committee then resolved that a special urgent meeting of the whole jamat should be convened on January 15, 1933, to consider what punishment should be given to the four offenders.

35. Thereafter Esmail Hasam and Janmahomed, who were present, were called before the meeting, and the decision was read out to them ; and as regards the plaintiff and Bai Mariambai, who were absent, the meeting passed a resolution that a notice should be sent to them through the Ianias to attend the meeting of the whole jamat.

36. A meeting of the members of the whole jamat was held on January 15, 1933,. the minutes of which are Exhibit K. The evidence is that the plaintiff was orally informed of this meeting on the day of the meeting itself. The agenda of the meeting and the papers relating thereto had not been kept available at the office of the jamat fifteen days before the meeting. The plaintiff did not attend, but a letter received from him, Exhibit L, was read at the meeting. Omitting formal parts, that letter was as follows :-

My nephew Ismail Hasam lives separately from me for the last twenty years. Owing to family (relationship) I had to be present only on the occasion of the

marriage nominally as an elderly person. Excepting this, I did not take any part.

Owing to ill-health I cannot be present before you Bhais. I therefore pray that you Bhais will take into consideration the circumstances and acquit me. However, if you Bhais are of opinion that I am guilty, you Bhais will be liberal enough to grant me pardon. Still if you Bhais are desirous of getting any explanation from me, you will be pleased to adjourn the matter for (15) fifteen days, by which time I hope my health will improve, and I shall be able to be present before you.

37. Esmail Hasam did not attend, but a letter received from him was read. Janmahomed Haji Alimahomed was present.

38. Mahomed Haroon Adam told the members what had been done in the matter by the managing committee. He reviewed what had taken place at the meeting of January 6, 1933, and the sending of the commission to examine Mariambai and to take her evidence, and said that their report was recorded in the meeting of January 8, 1933. He then said that at a subsequent meeting held on January 11, 1933, the meeting came to the conclusion that all that must have been a pre-arranged plot before the marriage. He pointed out that no such case had up till then come before the jamat, that the jamat had given pardon to the respondents, and the managing committee had taken up the case again and tried to bring it to an end, but as they did not succeed, they again approached the jamat.

39. The manager then read out the minutes of the meetings held on January 6, 8, and 11, 1933. After that the president said : "The managing committee had declared those four persons guilty and produced them before you. Now it rests with you, Bhais, to give them whatever punishment you like."

40. There was then a discussion as to whether the plaintiff should be given time as requested by him, and the meeting was against allowing time.

41. Subsequently, Bhai Esmail Rehemtulla moved that all the four offenders should be punished with excommunication, and Bhai Ahmed Aba seconded and several members supported. Bhai Janmahomed Joosab Noorani expressed the opinion that they should not be punished with excommunication, but with fine, upon the ground that the punishment of excommunication would have evil results. Upon the president taking votes, all the members except three or four adopted the proposal of the punishment of excommunication.

42. The material rules of the jamat are as follows :-Rule 12(Exhibit No. 5):-

In case a meeting of the whole of the jamat is required to be called for any urgent business, the Sheth can call such meeting after obtaining the consent of the managing committee in that behalf.

43. Rule 21 (Exhibit No. 5) :-

Intimation in writing of the date fixed for the meeting of the managing committee to consider the applications and complaints received by the jamat

shall be given to the parties not less than three days before the date fixed for the meeting requiring them to be present at the meeting so fixed. The Sheth shall hear the parties as well as their witnesses, &c., and shall give his decision according to the opinion of the majority of the members of the managing committee. However the right of inflicting penalty shall vest in the entire jamat.

44. Rule 27 (Exhibit No. 6) :-

The rules regarding "appeals" have been passed as Rule 27 of the jamat rules. They are as under :-

1. There can be no "appeal" in a case in which the managing committee has given its decision unanimously. (But it should be borne in mind that while that decision is given, no member remains neutral. If (any member) remains neutral, the parties shall have the right to "appeal").
2. Against the decision (given) in a case in which there has been "difference of opinion among the members of the managing committee, and which has been given by majority, any of the parties can appeal.
3. A meeting of the "full" jamat shall hear an "appeal".
4. The application for an "appeal" shall have to be made within one month from the date on which the managing committee may have given (its) decision.
5. The party preferring an "appeal" shall have to pay Rs. 51/-, in words, fifty-one, in cash, along with the application for the "appeal", as "fees" for the "appeal".
6. The "full" jamat shall give (its) decision in an "appeal" within four months from the date of the filling of the "appeal".
7. The managing committee shall forward to the "full" jamat the papers relating to the case, notes of the evidence of witnesses"" and other papers, and along with the same, they shall put up a summary of the case, and a copy of the decision. After going through the same, the "full" jamat shall give its decision. This decision shall be treated as final, and both the parties shall have to abide by the same.
8. Under no circumstances evidence of any of the parties or evidence of their witnesses shall be heard at the hearing of an "appeal".
9. If the appellant so likes, he can withdraw his application for an "appeal". But, in that case, he can get back only half of the "fees" paid by him for the "appeal".

45. A resolution, numbered 13, (Exhibit No. 6), had also been passed at the annual meeting of the jamat held on October 28, 1923, which was as follows:--

13. Bhai Abdul Kader Bawla moved the proposition that if a meeting of the "full" jamat was to be called, fifteen days before (the day of) that (meeting) the agenda of the meeting of the "full" jamat and the papers relating thereto should

be kept available at the office of the jamat to enable the Bhais (members) to consider the same, and the managing committee should give intimation to the Bhais (members) about the meeting of the "full" jamat by issuing "hand-bills" or by sending round criers. Bhai Mahomed Yusuf Abdul Sakur Sobani seconded the proposition. On the same being put to vote, it was passed by the meeting.

46. The plaint sets out the history of the matter. The plaintiff's submissions as to the meetings held on January 11 and 15, 1933, are contained in paragraphs 35 to 38, which are as follows :-

35. The plaintiff says that the jamat has no power or authority to expel or excommunicate a member for the reasons stated in the application of the said Ahmed Haji Ebrahim or on grounds set out in the said resolution of the managing committee dated January 11, 1933. The plaintiff says that the allegations against him are false, and do not constitute any offence against the community or at all events an offence punishable by excommunication. The plaintiff, therefore, submits that the resolution is ultra vires and is void and of no effect. The plaintiff also submits that the resolution is void for the other reasons hereinafter set out, and that the plaintiff still continues to be a member of the jamat.

36. The plaintiff says that the said meeting of the jamat of January 15, 1933, was not a validly convened meeting and had no authority to pass any such resolution as they purported to do, inasmuch as the same was held in contravention of the rule requiring 15 days' notice to all the members of the jamat after all the papers relating to the matter were kept open for their inspection.

37. The plaintiff further says that the said resolution of the jamat was based on a decision of the managing committee dated January 11, 1933, which decision was itself illegal and void and of no effect, for the following among other reasons,- (a) that the meeting of the managing committee was not convened in accordance with the rules, (b) that the plaintiff was not given sufficient notice containing particulars of charge or charges against him, (c) that the plaintiff was not given any opportunity of defending himself upon any of the charges of which he was purported to be held guilty or of any charge or charges whatever, (d) that the committee proceeded to hold the plaintiff guilty of charges which were never laid against him by any one, (e) ;that the application dated December 24, 1932 (Exhibit D) upon which the proceedings are believed to have been held contained 10 charge of any kind against the plaintiff, (f) that the decision of the committee was utterly unreasonable, absurd, arbitrary, capricious and palpably unjust, and was arrived at without evidence and is the result of the influence of "defendant Mo. 1 on the other members of the committee and was entirely mala fide.

38. The plaintiff says that the whole of the proceedings commencing after the said application, dated December 24, 1932, was entirely contrary to the rules of the jamat, and the meetings of the managing committee and of the jamat were held in breach of such rules, and contrary to the principles of natural justice;,,

and the said resolution, which is the result of such proceedings, is void and ineffective. The plaintiff further says that the proceedings were throughout influenced by (defendant No. 1, who was actuated by malice towards the plaintiff.

47. At the hearing the allegation of malice was abandoned by Mr. Bahadurji, who stated that he would not offer any evidence in relation thereto. I, therefore, at once answer issue 4 in the negative.

48. The submissions contained in the said paragraphs in the plaint are dealt with in paragraphs 31 to 34 of the written statements of all the defendants, other than the 2nd and 3rd defendants, and the 14th and 15th defendants. They are follows :-

31. Referring to para. 35 of the plaint these defendants deny that the jamat had no power or authority to expel or excommunicate a member for reasons stated in the petition of the said Ahmed Haji Ebrahim as alleged or on the ground set out in the resolution of the committee dated January 11, 1933, as alleged. These defendants deny that the allegations against the plaintiff are false. These defendants further deny that the said allegations do not constitute any offence against the community as alleged or that at all events the said allegations do not constitute an offence punishable by excommunication as alleged. These defendants deny the submission that the resolution of January 15, 1933, passed by the said jamat is ultra vires and void and of no effect as alleged. These defendants deny that the said resolution is void for the reasons mentioned in the subsequent paragraphs of the plaint. These defendants deny that the plaintiff continues to be a member of the jamat as alleged.

32. Referring to paragraph 36 of the plaint, these defendants deny the submissions contained in the said paragraph. These defendants submit that there is no rule of the jamat requiring fifteen days" notice to all members of the jamat of a meeting after all the papers relating to the same are kept open for inspection as alleged. These defendants deny that the said meeting of the jamat was held in contravention of the said alleged rule.

33. Referring to paragraph 37 of the plaint, these defendants deny that the decision of the committee dated January 11, 1933, was illegal, void and of no effect for the reasons mentioned in the said paragraph or any of them. These defendants crave leave to refer to the minutes of the proceedings of the various meetings held and of the notices given from time to time to the plaintiff, and submit that the said meeting of the committee was convened in accordance with the rules, that the plaintiff had the fullest notice of the charge or charges made against him and that the plaintiff was given a full opportunity of denying the said charge or charges. It is denied that at the said meeting, the committee proceeded to hold the plaintiff guilty of charges which had not been laid against him by any one, or that the said petition dated December 24, 1932, did not contain any charges against the plaintiff. It is denied that the decision of the meeting of the committee held on January 11, 1933, was unreasonable, absurd,

arbitrary, capricious, or palpably unjust as alleged. It is denied that the decision was arrived at without evidence or was a result of the influence of defendant No. 1 on the other members of the committee or that the decision was entirely or at all mala fide.

34. Referring to paragraph 38 of the plaint these defendants deny each and all of the submissions made in the said paragraph. These defendants submit that the plaintiff is in no way concerned in this suit with the charge made against him of disobeying the order of the managing committee passed at its meeting on December 25, 1932, inasmuch as the plaintiff having tendered an apology in respect of the said charge, the same was accepted by the jamat and the plaintiff has been excused in respect of the said charge. These defendants submit that the allegations in the plaint in so far as they relate to the said charge and the meetings in reference thereto are irrelevant. These defendants state that the proceedings of the managing committee and of the jamat on the petition of the said Ahmed Haji Ebrahim dated December 24, 1932, and the meetings of the managing committee and of the jamat held in reference to the said petition are in accordance with the rules and in accordance with the principles of natural justice and submit that the resolution passed on January 15, 1933, as a result of the said proceedings is valid and effective against plaintiff. It is denied that the said proceedings were at any stage influenced by defendant No. 1 out of malice towards the plaintiff as alleged.

49. The second and third defendants in their written statement said with reference to paragraphs 35 to 38 of the plaint that they would submit to the orders of the Court on the questions whether the plaintiff's excommunication was valid or whether he still continued to be a member of the Cutchi Memon community of Bombay.

50. The fourteenth and fifteenth defendants in their written statement said that they were not present at any of the meetings of the managing committee or at either of the meetings of the jamat and took no part in the proceedings which resulted in the plaintiff's excommunication, and they submitted that they should not have been made parties. Without prejudice to that submission, they adopted all the defences in the written statement of defendants Nos. 1, 4, 5, 7 to 13 and 16.

51. The issues raised were as follows :-

1. Whether this Honourable Court has jurisdiction to entertain the suit ?
2. Whether the meetings of the managing committee held on January 11, 1933, and or of the jamat held on January 15, 1933, were held in breach of the rules of the jamat as alleged ?
3. Whether the said meetings were held contrary to the principles of the natural justice as alleged ?
4. Whether the proceedings of the said meetings were influenced by the 1st

defendant and whether ;the 1st defendant was actuated by malice towards the plaintiff as alleged ?

5. Whether the resolution of the jamat dated January 15, 1933, excommunicating the plaintiff is void or invalid as alleged ?

6. Whether the plaintiff is entitled to any and if so what relief ?

7. Whether plaintiff was guilty of offence against Caste Rule or Usage?

8. Was there evidence before the managing committee meeting of 11-1-1933 and the caste meeting of 15-1-1933 upon which they based the resolution of excommunication ?

9. Whether in passing the resolution of 15-1-1933 the caste acted contrary to rules of natural justice ?

52. The plaintiff was called to give evidence both as to notice having been given to him for the meeting of January 15, at about 5 or 6 p. m. on that evening: and not earlier, and as to damage. At the end of the evidence given by Abdul Rehman Usman, the only witness for the defendants, who said that he had given notice to the plaintiff on January 12, Mr. Taraporewala in view of the cross-examination of the witness stated that he was not going to rely upon his evidence. The plaintiff's evidence is material, therefore, only upon the question of damage.

53. A number of authorities relating to enquiries into caste offences were referred to in a recent decision of the Appeal Court, *Ratansey Virji Vs. Meghji Hirji Jangeali*, , where it was pointed out that the general principles applicable to the expulsion of members from a club govern cases of expulsion of persons from a caste. The authorities establish that there must be a caste offence, that the rules of procedure of the caste (if any) must be complied with, that notice of the charge and of the meeting at which it is to be dealt with must be given to the accused, and full Opportunity afforded to him of defending himself, and that notice must be given to the members of the caste of the meeting and of what is intended to be dealt with at the meeting. As regards clubs, the following authorities may usefully be referred to : *Labouchere v. Earl of Wharnccliffe* (1879) 13 Ch. D. 346; *Dawkins v. Antrobus* (1881) 17 Ch. D. 615; and *Young v. Ladies' Imperial Club* [1920] 2 K. B. 523. In *Maclean v. The Workers' Union* [1929] 1 Ch. 602, a trade union case, many of the English authorities relating to domestic tribunals are, reviewed. If the requirements of natural justice have been complied with, a Court of Law will not act as a Court of Appeal as regards a decision of a domestic tribunal.

54. I will now deal with the issues in the light of these principles. As regards the first issue, no argument was addressed to me thereon. This Court clearly has jurisdiction to entertain this suit. I answer that issue in the affirmative.

55. As regards the second issue, both the meetings of January 11 and 15, 1933, were, in my opinion, held in breach of the rules of the jamat. Rule 21 required

that intimation in writing of the date fixed for the meeting of the managing committee to be held on January 11, 1933, should be given to the plaintiff not less than three days before the date fixed. This was not given. Mr. Taraporewala submitted that this was an adjourned meeting of the meeting held on January 8, 1933, and that three clear days' notice was not necessary. I do not agree. It is true that the minutes of the meeting held on January 8, Exhibit H, state that " for further consideration of the said matter " it was decided to hold a special meeting on January 11 ; but these minutes do not state that this meeting was adjourned, but that it was dissolved, and the minutes of the meeting held on January 11, Exhibit I, do not indicate that this was an adjourned meeting. I hold, therefore, as to this meeting that the managing committee did not comply with rule 21.

56. As regards the meeting of the jamat held on January 15, Mr. Taraporewala submitted that resolution 13 contained in Exhibit 6 did not apply. He contended that it was not a rule, but a resolution which was applicable only to annual general meetings, or to meetings at which questions of repairs, and so forth, were to be considered. He said that where only a question of punishment was involved, rule 12 applied. I do not agree with him. The resolution is of a later date than rule 12, and is in general terms. I hold that the meeting to consider punishment ought not to have been called until the resolution had been complied with. I am glad to be able to take this view of the matter, as it is obviously a matter of great importance to persons found guilty of an offence by the managing committee that all the members of the jamat should have access to the papers before they pass punishment. I answer the second issue in the affirmative.

57. I am not concerned in this case with the question whether the earlier meetings were held in accordance with the rules of the jamat, and I express no opinion thereon.

58. The third, seventh, eighth, and ninth issues can conveniently be dealt with together. In my opinion, the plaintiff was not given any notice of the charge against him, or of the offence of which he was found guilty. The only allegation against him in the petition, Exhibit A, was that the bridegroom's father got no satisfactory replies from the plaintiff, but this had reference to his attempts to get Mariambai to go back to her husband after she had gone to Mahim. The summons, Exhibit D, in case No. 6 of 1351, contained no particulars of any charge against the plaintiff. Mr. Taraporewala contended that the plaintiff knew what the charge was, and made his defence, namely, that he was separate from Esmail Hasam, and was not concerned with the matter, and that he was disbelieved. But this was at the meeting of January 6, when the bridegroom's father was again insisting upon the medical examination of Mariambai. Even at this meeting the plaintiff was not told what the charge against him was, and what he said at that meeting was in reply to a question as to what he had to say as regards the managing committee proceeding with the case, that is, with the.

summons, Exhibit D, which contained no particulars of any charge. As regards the meeting of January 11, the plaintiff received no notice of any charge, and was absent from the meeting, and it was at this meeting that the managing committee found him guilty of an offence with which he had never been charged, namely, of removing Mariambai soon after her marriage in conspiracy with Esmail Hasam and Janmahomed, and of aiding them in the said offence.

59. I am further of opinion that there was no evidence upon which the managing committee could hold the plaintiff guilty of the offence of which they in fact held him guilty. Mr. Taraporewala contended that they were entitled to draw an inference of guilt from the facts before them. I do not agree. At the very outset on December 25, as appears from Exhibit B, the plaintiff referred to the arrangement in pursuance of which the marriage was not postponed, but took place on the day fixed, and this was not challenged by the bridegroom's party at this meeting ; he also said that he sent Mariambai to the bridegroom, and went to his own house at 12 o'clock. There is no evidence whatever that he had anything to do with Mariambai going to Mahim, or that she went at his instigation, which is the offence of which he has been held guilty, and there is, in my opinion, no evidence from which the managing committee were entitled to draw the inference that he conspired with Esmail Hasam and Janmahomed to induce her to run away at once after the marriage. In her letter, Exhibit E, Mariambai also referred to the arrangement which she said was made before the marriage. This letter was read at the meeting of January 6, and all that the bridegroom's father there said in reference to it was that the statements made in that letter were false, and that after his demand for the medical examination of the Bai were satisfied, he would submit his arguments with reference to that letter. This he never did, and beyond this general denial both the plaintiff's and Mariambai's statements as to the arrangement before the marriage remained unchallenged. At the meeting of January 11, no evidence was, taken in reference to the case against the plaintiff, and managing committee merely reviewed what had taken place at the meetings held on and after December 31, and drew therefrom an inference of guilt against the plaintiff. In my opinion, there was no evidence before them from which they were entitled to draw that inference.

60. The next question is whether the offence of which they held the plaintiff guilty was an offence against caste rule or usage. The offence does not fall within any of the rules of the jamat, and there is no evidence that it was an offence according to usage. On the contrary, the evidence is that in the annals of the caste existing over about two hundred years, such an incident had never happened before. The practice that a wife should go to her husband after marriage is a universal practice, and is not peculiar to the Cutchi " Memon Community. A Cutchi Memon girl over the age of fifteen is in " the eyes of the law a free agent in regard to matrimonial matters, and her husband has remedies in a Court of Law if she will not live with him after marriage. In *Ratansey Virji Vs. Meghji Hirji Jangeali*, , in dealing with an argument that though in the case of a club there is no power of expulsion unless such a power

is given by the rules, in the case of caste there is an inherent power of expulsion,-the learned Chief Justice expressed a doubt whether there was an inherent power of expulsion in a caste not dependent on proof of usage within the caste. I share that doubt. I am certainly not prepared to hold that this community had the power to excommunicate a member for conspiracy with others to induce a woman, who was herself a free agent in the matter, to leave her husband, in the absence of any caste rule or proof of usage that this was an offence. I hold that the offence of which the plaintiff was held guilty was not an offence against caste rule or usage.

61. I answer the third issue in the affirmative, the seventh and eighth in the negative, and the ninth in the affirmative. It follows that I must also answer the fifth issue in the affirmative, and I answer it accordingly.

62. There remains the question whether the plaintiff is entitled to recover damages. Mr. Taraporewala contended that in the absence of proof of malice, damages are not recoverable. Mr. Bahadurji said that he could find no case of this kind in the books where damages had been claimed, but he submitted that it was a tortious act wrongly to exclude a man from proprietary rights, and that if the special damage alleged was not proved, the plaintiff was entitled to general or at any rate to nominal damages. In my opinion malice is not an essential ingredient of a tort of this character, and damages are recoverable. No doubt, the defendants owed a duty to themselves and the Cutchi Memon Community to protect the interests of the community, but they also owed a duty to the plaintiff not to injure him without legal justification and excuse. In the circumstances of this case, the defendants do not in my opinion bring themselves within the principle that a person who owes conflicting duties does not commit a wrong, even though the result of what he does is to cause damage to another, if he can establish a legal justification or excuse by proving that he honestly did what he bona fide and reasonably believed to be his duty. Having deprived the plaintiff of his rights and privileges as a member of the Community and of his civil rights in the properties of the jamat upon no evidence and for an offence which was not a caste offence, without giving him notice of the charge, and without complying with the rule of procedure laid down by the casts, the defendants have, in my opinion, proved no legal justification or excuse, and are liable to pay damages.

63. The plaintiff has given particulars of the damage alleged to have been sustained by him in Exhibit L to the plaint. As regards the first item of Rs. 3,600 being the amount of damages alleged to have been sustained by the plaintiff by reason of his losing his employment as secretary to the Haji Saboo Siddick Mosque and Trust at the monthly salary of Rs. 150, the plaintiff's evidence is that he had held that position from about 1931 until January 22, 1933, when he received a letter of that date, Exhibit Q, from the Chairman of the board of trustees informing him that at a meeting of the trustees held on January 18, 1933, it was resolved to ask him, and he was thereby asked to refrain from attending the trust office pending further orders. There is no evidence that the

excommunication of the plaintiff had anything to do with this resolution and request, and I hold that the plaintiff has not proved this head of damage.

64. As regards the next item of Rs. 1400 being the amount of damages alleged to have been sustained by the plaintiff upon the ground that he lost his business as an insurance broker so far as his Cutchi Memon constituents were concerned, the plaintiff's evidence was that he had been doing that business up to the time he was excommunicated, that his average income from that source was about Rs. 50 to Rs. 60 per month, that his constituents in that business were mostly Cutchi Memons belonging to his caste, and that since his excommunication, they had ceased to do business with him, and would not even speak to him. The plaintiff, however, admitted in cross-examination that, having filed his petition in insolvency and having been adjudicated on November 26, 1931, in his schedule which he filed on November 30, 1931, showing gross liabilities amounting to Rs. 7630 and assets nil, he did not mention anything about having done any insurance brokerage business, but stated that his losses were due to speculations in shares. The plaintiff's discharge was on July 19, 1932, suspended for one year, and he did not get his final discharge till July 19, 1933. I do not believe the plaintiff's evidence that he was making an income from insurance brokerage business, and I find that he has not proved this head of damage.

65. In the circumstances of the case, I think that the plaintiff is entitled to recover only a small sum by way of general damage, and that I assess at Rs. 100.

66. There will be a declaration in favour of the plaintiff in terms of prayer (a) of the plaint, an injunction in terms of prayer (d), and the plaintiff will have Rs. 100 as damages, and the costs of the suit, and a decree accordingly.

67. Plaintiff's costs between party and party and Rs. 100 damages are to be paid by the defendants and or are to come out of the caste property, and after payment of the plaintiff's costs and damages, the defendants' costs of the suit between attorney and client and the costs and damages which they may pay to the plaintiff are to come out of the caste property.