

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ramasawmy Aiyar and others v. Venkata Achari and others, from the Sudder Dewanny Adawlut of Madras ; delivered April 27, 1863.*

---

Present :

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

SIR JOHN TAYLOR COLERIDGE.

---

SIR LAWRENCE PEEL.

SIR JAMES W. COLVILE.

THE subject of litigation in this case is the right of administering what is called Purohitam to seventeen classes or castes of the numerous pilgrims who resort to the great Pagoda and other Temples in the Island of Ramaswaram.

The Appellants, the Plaintiffs in this suit, sue, and the Respondents are sued, as representatives of the bodies to which they respectively belong. Whilst, however, the Respondents are all members of an homogeneous class, described indifferently as Tadwadi and Telegu Brahmins, or as Parishai Bhattars, resident in and about Ramaswaram ; the Appellants are some of them Arya Brahmins, and others Gurukals : the differences between these two latter classes, their rights and privileges, being some of the matters involved in the question at issue in this suit.

The case put forward by the Appellants is shortly this : they assert that ever since the first foundation of the Pagoda, an event which they ascribe to a very remote age, the Arya Brahmins possessed the privilege, and that an exclusive privilege, of administering Purohitam to all classes of pilgrims resorting to

Ramaswaram. They treat, however, this privilege as alienable, or at least capable of delegation; and state that by an instrument bearing a date which it is now agreed corresponds with A.D. 1675, the Arya Brahmins have, in consideration of an annual payment of 50 pons, transferred to a community called the Adhyena Bhattars the privilege of administering Purohitam to seven specified classes of pilgrims; and in some way or another, and at some uncertain but distant date, have conferred the same privilege over ten other classes of pilgrims upon the community of the Gurukals. They further state that the Gurukals again transferred the privilege as to six of those ten classes to the body represented by the Respondents, which it will be convenient to distinguish as Parishai Bhattars, on the condition that the latter would account to them for 20 per cent. of the emoluments derived from the exercise of the right; that a dispute having arisen between these two last-named bodies, an arbitration took place A.D. 1726, which resulted in the execution of the instrument set forth as Exhibit E, or No. 41 at page 29 of the Appendix; and that difficulties having subsequently occurred in carrying that arrangement into effect, the payment of 20 per cent. on the collections was commuted for a fixed annuity of 100 pons, which by the instrument F, or No. 43 (set forth at page 30 of the Appendix), the Parishai Bhattars some time about A.D. 1762 agreed to pay, and did in fact pay up to the year 1825, to the Gurukals. The Appellants' plaint, after stating these facts, notices the proceedings in a suit (No. 232 of 1826) in the Munsiff's Court, the effect of which their Lordships will consider when they come to deal with the evidence. It also states the effect of a copper-plate deed (No. 74 at page 57 of the Appendix), by which, in A.D. 1714, the then Zemindar of Ramnad granted certain dues payable to him by the Parishai Bhattars, and amounting to 90 pons, to a particular goddess in the Pagoda on account of the Friday services. It also states some proceedings before the Collector in 1835, when that officer endeavoured to compose the strife which had long existed between these rival sects of Brahmins, by an order which, as appears from the Order itself, No. 80 at page 62 of the Appendix, affirmed the rights of the Parishai Bhattars to administer

Purohitam to twenty-one classes of pilgrims, subject to the payment into the Pagoda of 190 pons annually; being the 90 pons for the Friday services, and the 100 pons payable to the Gurukals. This order assumed that the right of the Parishai Bhattars as to seventeen of their classes was not in dispute, and it left either party, if dissatisfied with it, to bring a civil suit. The plaint then shortly notices the proceedings in a suit of 1835, which was brought by some of the Arya Brahmins against some of the Parishai Bhattars in respect of two of the classes comprised in the Collector's order, and was dismissed by a Decree of the Zillah Judge dated the 27th of June, 1840; a Decree confirmed on appeal by the Provincial Court on the 28th of December, 1841. It then explains that the claim in the present suit is limited to seventeen of the twenty-one classes comprised in the Collector's order, because the remaining four belong to the Adhyena Bhattars under the deed of 1693; and further, that whilst the claim as to eleven of the seventeen classes is general, as to the remaining six, which were the subject of the instruments of 1726 and 1762, it is limited to the enforcement of the rights of the Gurukals under the latest of these documents. The particular relief prayed is a decree for the payment of Rs. 2,916 : 10 : 8, being the arrears for twenty-three years of the annuity of 100 pons payable to the Gurukals in respect of the six classes; of Rs. 4,400 by way of damages incurred in respect of the other eleven classes; for a declaration that the Purohita Mirassi of the eleven classes is henceforth to be enjoyed by the Arya Brahmins without the interference of the Parishai Bhattars; and for an order that the Parishai Bhattars do regularly pay the 100 pons to the Appellants and other Aryas and the Gurukals, or otherwise that the Mirassi as to these classes also is to be enjoyed by the Appellants and other members of the Arya Mahajanum, and the community of the Gurukals, without the interference of the Parishai Bhattars.

The case set up by the Respondents in opposition to that of the Appellants is, that their ancestors were established in the place or neighbourhood, and invested with the privilege of administering Purohitam to pilgrims resorting to Ramaswaram, by a certain Rajah,



about 1,000 years ago ; that they afterwards from generation to generation enjoyed this privilege, and the emoluments resulting from its exercise, and so acquired the title of Parishai Bhattars ; that the Zemindars of Ramnad imposed an annual tax upon them of 160 pons payable out of their receipts, which they continued to pay until the time of one Vijaya Raghunadha, who granted 100 out of the 160 pons to the community of the Gurukals on their complaint of having no income in the Pagoda, and afterwards granted the remaining 60, with some other dues payable by the Parishai Bhattars (making 90 pons in all), for the Friday Services of the Pagoda.

They treat the latter grant as made by the Copper-plate Deed of 1714 ; do not show in what precise form or by what instrument the first was made ; and assert that after 1714 the whole of the 190 pons was paid into the Pagoda. They state that in 1827 there was an attempt to settle the disputes between their community and that of the Arya Brahmins by a native Panchayat (the failure of which is much to be regretted) ; that afterwards in the course of an inquiry before the Sub-Collector, the Aryas admitted that in respect of seventeen classes there was no dispute as to the right of the Parishai Bhattars, and that the Collector's order of 1835 was made on that admission. They further insist strongly upon the Decrees in the suit of 1835 as a bar to the present suit, which they also contend is barred by the Regulation of Limitation.

The issues settled in this suit (see Appendix, p. 24) threw upon the Appellants the burthen of proving first the hereditary and exclusive right of the Arya Brahmins to administer Purohitam to all castes of people frequenting Ramaswaram as pilgrims, and their ancestors' enjoyment accordingly ; secondly, the grant, as alleged by way of dowry, of the ten castes to the Gurukals, and that the Parishai Bhattars had since rented from the Gurukals six of the ten castes, undertaking to pay them annually two-tenths of the emoluments under a written document which had been acted upon ; 3rd, that under another document this liability had been commuted for an annual payment of 100 pons, and that the latter had been paid up to 1825 ; and 4th, that the Defendants had taken illegal possession of

the eleven other castes, and that with the exception of these and the castes held by the Adyhena Bhattars all other castes were enjoyed by the Arya Brahmins. The issues which the Respondents were called upon to prove were, 1st, the alleged right of the Parishai Bhattars to perform Purohitam to all castes, that the Arya Brahmins had no title thereto, and had come to Ramaswaram since a particular date; 2nd, that they had originally paid an annual tax of 100 pons to the Zemindar, and subsequently, with his consent, paid the 100 pons annually to the Gurukals for their maintenance.

The suit was first heard by the Judge of the subordinate Court of Madura, who, on the 19th of February, 1855, made a Decree in favour of the Appellants. From this there was an Appeal to the Civil Court of Madura, and the Judge of that Court on the 1st of August, 1857, reversed the Decree below, and dismissed the suit on the ground that the Appellants had failed to prove the conclusive right which they claimed; but directed each party to pay their own costs. A special Appeal was then preferred to the Sudder Dewanny Adawlut of Madras. That Court, on the 13th of December, 1858, dismissed the Appellants' suit with costs, on the ground that their claim was barred by the Regulation of Limitation, the only question which it allowed to be argued before it.

The present Appeal is general. It has been very fully and ably argued before this Committee, both upon the merits of the case, and also upon the question whether the suit is effectually barred, either by the Decrees in the former suit of 1835, or by lapse of time under the Regulation of Limitation.

Their Lordships propose, in the first instance, to deal with the merits of the case.

The first observation that arises is, that the existence or non-existence of the original and exclusive right to administer Purohitam to all classes of pilgrims, which is claimed by the Arya Brahmins, is an issue which goes to the whole case. It is true that that part of the claim which consists of the arrears of the annual payment of 100 pons, under the instrument of 1762, is founded upon contract. But the contract is one between the Parishai Brahmins and the Gurukals, and it is difficult to see how the Appellants, suing on behalf of the commu-

nity of Arya Brahmins, can establish any title to relief in respect of this part of the case, unless they prove that the title of the Gurukals to these six castes was derived, as alleged in the plaint, from the earlier and original title of the Aryas, and was so held by the Gurukals that the subsequent disposition of these castes must be taken to have been made for the benefit of the Arya community, as well as for that of the Gurukals.

What, then, are the proofs adduced in support of this first and principal issue?

The earliest in date consists of extracts from one of the Puranas. These, like the statements in the pleadings of the Appellants' case, carry us far beyond the bounds of legal or historical evidence. But it is argued, and fairly and properly argued, that these ancient books may legitimately be used as evidence that a certain state of facts, or a certain state of opinion, existed at the date of their compilation. That date is sufficiently uncertain; for we are not told when this particular Purana is supposed to have been written; and it appears from the writings of eminent Orientalists, that the period during which the eighteen recognized Puranas were composed is a very wide one, extending probably from the eighth to the sixteenth century.

Evidence of the Appellants' right, dating even from the latest of these epochs, would of course be most valuable. Their Lordships, however, fail to find in the extracts before them satisfactory proof that at the time when this Purana was compiled (whenever that may have been), the Arya Brahmins were in the enjoyment of the peculiar and exclusive privilege which is now claimed by their descendants.

There are passages which show that a community known as Arya Brahmins then existed at Ramaswaram, and embody the legends concerning the miraculous origin of their ancestors, and their migration, at the summons of Rama, to the southern coast, from their native seat in Oudh. Other passages undoubtedly recommend in strong terms the ministrations of the Arya Brahmins, and imply that the full spiritual benefits of a pilgrimage are not to be obtained without them. But these do not lead with any certainty to the conclusion that even at that distant period all the pilgrims to Ramaswaram in fact resorted



to the Aryas for Purohitam, or were under a positive and well-recognized obligation to do so. The very mode in which the peculiar efficacy of the ministrations of the Aryas is pressed leads to the inference that even then there was some variety of practice and opinion in this matter. Part of the Purana cited at page 102 of the Appendix is in the shape of a dialogue, wherein one of the interlocutors begins by expressing his doubts whether Puja should be offered through the instrumentality of the Aryas, doubts which are of course ultimately removed. Taking the authority of these texts at the highest,—and it must be remembered that there is little or no evidence as to their authority,—their Lordships cannot find that they do more than enjoin upon pilgrims who wish to have the fullest spiritual benefit of their pilgrimage, the duty and necessity of resorting to the Aryas for their offices. They do not show that the duty was universally recognized as imperative, or that the enjoyment of the privilege, as it then existed, was exclusive.

Again, the value of the texts, such as it is, as evidence in support of the Appellants' title, is in their Lordships' opinion much diminished by the consideration that the privilege now claimed is admitted to be capable of alienation or delegation. They would be of far more weight if the case made were that by positive ordinance or by traditionary usage the privilege of administering certain religious rites had become vested in a particular class of priests, so that in the contemplation of all faithful Hindus the efficacy of the rite must for all time depend on the status or character of the ministrant. When the principle of alienation or delegation is admitted, texts to the effect that the efficacy of the rite depends on the character of the ministering priest necessarily lose their force.

Moreover, this quality of the privilege must greatly increase the difficulty of proving its continued enjoyment, supposing that it ever existed. Functions inseparably annexed by the authority of sacred books to a particular order of men will be recognized, preserved, and perpetuated by the religious sentiment of succeeding generations. But the privilege of exercising these functions, when alienable for money, ceases to be the subject of

religious sentiment, and becomes a mere proprietary right; and every long-continued enjoyment of the privilege by others is of course capable of being ascribed to a presumed grant or alienation of which the direct evidence is lost.

That the present claim of the Appellants is not supported by any general religious feeling or conviction on the part of the Hindus, whether founded on the texts of the Puranas or independent of them, may be inferred from the very nature of the disputes which have continued for so many years. It is clear that during that long period there has been great diversity of practice and opinion amongst those who resort to the Pagoda; that out of the vast concourse of pilgrims from all parts of the Dekhan, if not of India, some have sought for Purohitam at the hands of the Aryas, others at the hands of the Parishai Bhattars, others, again, at the hands of the Adhyena Bhattars; probably as they have been moved by considerations of race, language, district, or caste. But we have more particular evidence upon this point in the Sreemokum of Sunkar Acharyar which was produced in evidence in the suit of 1835, and is referred to in the pleadings of this suit. That document was in the nature of a certificate from a person described as the High Priest of all the Hindoos of the south of India, and was strongly adverse to the claim of the Aryas. Mr. Elliot, who as Judge of First Instance decided the suit of 1835, felt it to be of sufficient weight to relieve him from the necessity of pursuing the inquiries which he had directed through Pundits touching the authority of the texts from the Puranas. The Appellants themselves, in their pleadings, seem to admit the general authority of Sunkar Acharyar, but endeavour to take off the effect of his certificate by telling a not very credible story of his having given it when in a fit of irritation against the Aryas. They have also produced, by way of answer to it, the Exhibits Nos. 28 and 30, at pp. 26 and 27 of the Appendix. It is sufficient, on this part of the case, to observe that the effect of these conflicting documents is at most to leave the question in doubt, and that the Appellants cannot adduce, in support of this claim, anything like a clear concurrence of opinion upon the part of those who may be supposed to be at the present time authoritative expounders



of the ceremonial law and usages of the Hindoo religion.

We now proceed to consider the effect of the other documentary evidence.

The documents which purport to be the earliest in date, except the Puranas, are the Deed D, No. 40, said to have been executed to the Aryas in A. D. 1675 by the Adhyena Bhattars; the Copper-plate Deed produced by the Respondents dated 1714; the Deed E, No. 41, said to have been executed by some on behalf of all the Parishai Bhattars to the Gurukals in 1726; and the subsequent Agreement F, No. 43, between the various parties, which purports to have been executed in 1762.

The first of these can at most prove that the Adhyena Bhattars, who are not parties to this suit, claim under a Deed, purporting to be of considerable antiquity, the right of administering Purohitam to seven classes of pilgrims, other than the classes which are the subject of this litigation, under a title derived from the Aryas. The Adhyena Bhattars are said to have been since dispossessed of four of these seven classes by the Parishai Bhattars. But whatever may be the merits of that dispute they are not in question in this suit. This deed can prove nothing here except that in 1675 the Aryas claimed the right of disposing of the privilege as to these particular classes of pilgrims, and that the Adhyena Bhattars then admitted their title.

The effect of the Deeds E and F (if any) upon the issue which we are now considering, viz., the original and exclusive right of the Arya Brahmins to administer Purohitam, is limited to the six classes of pilgrims which are the subject of these instruments. They do not touch the eleven other classes that are in question in this suit.

Their genuineness is questioned by the Respondents, who give an account of the origin of the payment of 100 pons that is inconsistent with them. It has been argued that suspicion is cast upon them by the circumstance that no mention is made of them in the proceedings in the suit between the Gurukals and the Aryas in 1807, although the Parishai Bhattars are there stated to possess the privilege of administering Purohitam to these six classes, and to be subject to the duty of paying 100 pons annually to the Gurukals, and that nothing was

heard of them until the suit of 1826. It has been further argued that there is no proof of the custody whence they came, or other evidence to support them. Notwithstanding these arguments their Lordships are disposed to deal with the case as if both these deeds, as well as the copper-plate deed of 1714, were genuine. They think the two former may well stand with the latter.

The copper-plate deed is upon the face of it nothing but the grant of certain subjects in favour of the goddess named in the heading of it, "on account of the Friday services." The annual payment of the Parishai Bhattars on this account appears on the whole evidence to be limited to 90 pons. This instrument, therefore, proves nothing as to the annual payment of 100 pons to the Gurukals, or its origin. It undoubtedly proves that in A. D. 1714 the body which the Respondents represent was known as "Parishai Bhattars," a title which implies some connection with pilgrims, and that as such they carried on a business which may reasonably be inferred to have been the administration of Purohitam to some classes of pilgrims. And even if it be assumed that those classes of pilgrims included the six which are specified in the Deeds E and F, that hypothesis is not necessarily inconsistent with these deeds, for the earlier Deed E does not purport to be the original grant of these classes, or to show how the administration of Purohitam to them by the Parishai Bhattars began. It recites the existence of a dispute between the Parishai Bhattars and the Gurukals touching the administration of Purohitam (a dispute which may have been of long standing), an appeal to the Zemindar, a reference to arbitration, and an award which, whilst it left the administration of the rite to the six classes with the Parishai Bhattars imposed upon them the duty of paying 20 per cent. on their receipts to the Gurukals. The two Deeds, E and F, therefore are not inconsistent with the Copper-plate Deed, which the Respondents may be taken to have proved, though they are inconsistent with their allegations touching the origin of the payment of 100 pons, which they have failed to prove. From the three documents taken together it follows that before 1726, and possibly before 1714, the Parishai Bhattars were in the exercise of

the functions involved in the administration of Purohitam to some classes of pilgrims, including, or at least extending to, the six classes which were the subject of the agreement of 1726; but the material question with reference to the issue now under consideration is to what extent that arrangement with the Gurukals, and the description of the Gurukals in the two deeds as "forming the Arya Mahajanum," or "a part of the Arya Mahajanum," or "composed of the Arya Mahajanum," involve any admission or proof of the general title set up by the Appellants.

The answer to this question will be best supplied by a correct definition of the relation in which the Gurukals stood to the Arya Brahmins. Their Lordships must reject the statement upon this point which is contained in the fourth paragraph of the Appeal Petition at page 124 of the Appendix, as inconsistent with others made by the Appellants in certain stages of the proceedings, and with the evidence in the cause. It was, in fact, almost given up by Mr. Rolt in his reply, and treated as a mere argument of the Appellants' pleaders in answer to an objection taken by the Judge in the Court below.

The most credible account of this Gurukal community is probably to be found in the proceedings in the suit of 1807 (the piece of evidence that is next in order of date), since it was given by the Gurukals themselves when engaged in litigation with the Arya Brahmins, and was then admitted by their opponents to be substantially correct. From that it would appear that the Gurukals were Maratta Brahmins invested with the office of performing the puja, or worship, in the interior of the temples; that they were appointed by the Aryas, and were in the habit of marrying the daughters of Aryas; that the office of Gurukal was not hereditary, but that on the death of any one of them another Maratta Brahmin was appointed in his place; that in 1807, the community of Gurukals were in the receipt of the 100 pons per annum from the Parishai Bhattars, and of fees payable in respect of other classes of pilgrims, by whomsoever the rite of Purohitam was administered; that the net emoluments of this community were divided amongst the members of it, and each man's share again apportioned between him and the particular Arya whose daughter



he might have married. The two communities were therefore distinct bodies, differing in race; and this very suit of 1807 shows that they might have different and conflicting interests. If this be so, the description of the Gurukals as "composing," or "composed of," or "forming part of the Arya Mahajanum," must be inaccurate, unless these words imply a body in which the two communities, though distinct for some, may coalesce for other, purposes. Such an hypothesis is not inconsistent with the literal meaning of the words as it may be gathered from "Wilson's Dictionary."

Again, in this suit of 1807, the Gurukals seem to have claimed the right of administering Purohitam to the six and certain other classes of pilgrims as a prescriptive right, without admitting any earlier title in the Aryas. The Aryas, in their answer, seem to set up a joint interest in the emoluments, and speak of a compromise and arrangement effected by a Deed, bearing a date which would correspond with A.D. 1745, of which there is no proof. Therefore the case made on either side in the suit of 1807 seems to be hardly consistent with that made in the present suit as to the derivation of the Gurukals' title from that of the Aryas. And upon this part of the case it appears to their Lordships that it would be unsafe to infer from the Deeds E and F, or from any evidence that has yet been considered, either that the Aryas have a common interest with the Gurukals in the annual payment of 100 pons, or that such title as the Gurukals may have had in the six classes of pilgrims before the arrangement of 1726 was necessarily derived from the original and exclusive title to all classes of pilgrims which is set up by the Aryas. This view of the case is in some degree confirmed by what is called the "Attachi" at page 60 of the Appendix. That paper purports to be a representation made in March 1822, when the Pagoda was under the management of the Government officers, by some of the Appellants, to the effect that the Parishai Bhattars have allowed the payment of 90 pons and 100 pons to fall into arrear. It treats the whole money as payable to the Pagoda, and therefore, in the existing circumstances, to the Circar or Government, but describes the 100 pons as the masadanum for the Sabhayar or community of Gurukals.

The rest of the documentary evidence may be reduced to three heads: the proceedings in the Moonsiff Court in 1826; the proceedings which resulted in the Collector's Order of 1835; and the proceedings in the suit of 1835.

The first suit was brought by some Parishai Bhattars against some Aryas, and it is said to have been collusive. The Plaintiffs in it asserted the title of their body to administer Purohitam to twenty-four classes of pilgrims, admitting the duty of paying annually 190 pons to the Pagoda and the community of Gurukals. But the immediate subject of the suit was the alleged invasion of this right as to a class called "Sangita," which is one of those that were afterwards awarded by the Collector to the Aryas. There is no question about that class in this suit. Other Arya Brahmins intervened by petition, and set up their general title in the Moonsiff's Court. The Moonsiff made a Decree against a Defendant who had admitted (it is said collusively) the Plaintiff's claim, and dismissed the suit as against the other Defendants. He also intimated an opinion that the suit, if properly framed, would have been brought against the Arya Mahajanum, which appeared to have been in the enjoyment of the Purohitam of the Sangita class. This Judgment has been treated as a decision in favour of the Arya Brahmins, but it cannot be taken for more than an expression of opinion that they might have a good title as to the class of which they appeared to be in possession.

The chief importance of the proceedings which ended in the Collector's order consists in the admission supposed to have been made before Mr. Paris, a subordinate Collector, in the course of a local inquiry made by him in 1829. It is contained in the Exhibit No. 79, at page 62 of the Appendix. It is referred to, though it is not very accurately described, by the Collector in Exhibit No. 80, and is the basis of his order. It was produced in the suit of 1835, and was proved to the satisfaction of Mr. Elliot the Judge. He says of it in his Judgment, "The Seristadar, it appears, wrote down in the presence of the Sub-Collector of Madura, from the mouths of the Plaintiffs, that they had no dispute respecting seventeen of the twenty-five castes, but only for the remaining eight." Mr. Rolt argued

strongly upon the improbability of the Aryas making such an admission so soon after the decision in the Moonsiff's Court. It does not, however, cover this Sangita caste, which alone was the subject of the suit before the Moonsiff. And the improbability, such as it is, seems to their Lordships to be outweighed by the consideration that two officers with local experience have, whilst the facts were still recent, treated the document as genuine, and acted upon it. It is, therefore, difficult to suppose that the admission was not made by some at least of the Arya community, and it covers fifteen out of the seventeen classes that are the subject of this suit.

The decision of the Collector was almost immediately followed by the suit of 1835. The original Plaintiffs in this were four only of the Arya Brahmins. Two of them having died, twenty more members of the community intervened by petition, and seem to have adopted and prosecuted the suit. Its object was limited to the enforcement of the alleged rights of the Arya Brahmins as to two only of the classes which are the subject of this suit; but the original title of the community was stated in terms as wide as those in which it is now stated, and was distinctly put in issue. It was, moreover, supported by much the same evidence as that which has been adduced in this suit. The decision, however, of the Zillah Judge, confirmed on appeal by the Provincial Court, was that the title was not made out, and the suit was accordingly dismissed.

Their Lordships may dismiss the oral testimony with the observation that it is almost necessarily inconclusive. The question is one on which the Hindoo community has for many years been divided. Each witness, as a matter of course, deposes according to the practice, opinions, or traditions of his own family. Nor will proof of acts done even by so considerable a personage as Holkar do more than prove the practice or opinion of a particular family or individual.

Upon the whole it is their Lordships' opinion that the evidence, though it may establish that the Arya community has existed as part, and a principal part, of the Hierarchy of this Pagoda and its dependencies from a period of remote antiquity, and that the Appellants may be taken to be the actual representatives of that community, fails to show,



either by documentary proof of its origin, or by such proof of long and uninterrupted usage as in the absence of a documentary title will suffice to establish a prescriptive right, the existence at any time of the original and exclusive privilege which the Appellants have made the foundation of their title. It also fails to show when and how, if the right ever existed, its enjoyment was first interrupted, and, consequently, leaves it uncertain, whether the interruption was caused by an invasion for which there is now a remedy, or by an actual or presumable act of alienation. It is not proved that the Appellants' community was at any particular time in the actual enjoyment of the privilege of administering Purohitam to eleven out of the seventeen classes which are the subject of this suit; whilst there is evidence that the Parishai Bhattars for some time anterior to 1835 were in the undisputed enjoyment of this privilege as to nine of these classes, and exercised it, though subject to dispute, as to the remaining two. Nor is it inconsistent with the evidence in the cause to suppose that this state of things may have existed in or before the year 1714. And if the evidence as to the remaining six classes shows that the Parishai Bhattars' undisputed enjoyment of the privilege as to these six classes for nearly 150 years has been subject to the payment of the 100 pons, under an arrangement which implies an acknowledgment of an earlier title in the Gurukals, it fails, as their Lordships have already observed, to establish either that the Aryas have a common interest with the Gurukals in this annual payment, or that the title of the Gurukals to these classes was necessarily derived from the still earlier and more general title of the Aryas which the Appellants assert.

The Appellants, therefore, on all points have failed to relieve themselves of that burthen which the necessities of their case, and the particular issues directed in the cause, imposed upon them. Nor is this failure the less fatal to this suit because the Respondents may also have failed to show that they had any exclusive right in the privilege which they enjoy; or because they may be under a liability to the Gurukals in respect of the annual payment of 100 pons, which may be capable of being enforced in a suit properly framed for that purpose.

Their Lordships, taking this view of the merits of

the case, are relieved from the necessity of considering whether either the Decrees in the former suit of 1835, or the Regulation of Limitation, present an effectual bar to this suit. They rest their decision on the ground that the Appellants have failed to support their claim by any sufficient evidence.

Their Lordships, however, are of opinion that the Sudder Court ought not to have limited the argument to the single question of limitation; and that it ought not to have thrown on the Appellants the whole costs of the suit. They think that the Decree of the 29th June, 1857, sealed and signed on the 1st August in that year, was correct in the direction given by it as to the costs up to the latter date, and they will, therefore, humbly advise Her Majesty that the Decree of the Sudder Court ought to be varied, and to stand and be simply for the dismissal with costs of the Appeal to that Court; the Appellants, however, paying the costs of this Appeal.

---