

**ABBOTT, D. G. AND FAMILY
(MARTHA DAY)**

MARTHA E. DAY (Abbott).



MARTHA E. DAY was born in Grafton, Wis., January 23, 1865. While still a child her mother died, but her devoted Christian father trained her carefully, so that her Christian life developed as did her physical. When just a young girl he laid his hand on her head and said: "I thought the Lord would call one of my girls to be a missionary; perhaps he will call you."

In 1887, Miss Day took her A. B. at the Iowa Wesleyan in Mt. Pleasant. She taught one year in Fairfield, Iowa. In November, 1888, she sailed for India, sent out by the Des Moines Branch to fill the position, for which she was especially chosen by Bishop Thoburn, on account of her attainments and her rare devotion to God.

She remained in this position, the Calcutta Girls' High School, teaching Mathematics and Latin until 1891, when she was sent to Moradabad to take charge of a Boarding

School for native girls. This school grew and prospered under her administration and she had the pleasure of seeing the first girl from this school pass the first Government University examination taken by girls in Rohilkund. Under her fostering care, the school became the largest and most influential High School in that section.

Miss Day returned home in 1894. She was married September 10, 1895, to Rev. David G. Abbott, of the Iowa Conference. Both before and after her marriage, Mrs. Abbott rendered much very efficient service to the Des Moines Branch, being a speaker of unusual ability and attractiveness. She never failed to arouse new interest and deepen the interest of those already enlisted.

In 1900 Mr. and Mrs. Abbott went to India under the auspices of the General Board of our church. At present (1902) Mrs. Abbott has supervision of the Evangelistic work in the Khandwa District, Central Province, directing the work of the Bible-women. Des Moines Branch still claims her as its own.

was a member of her own church, she did not know to whom to apply, nor what was expected of her.

Miss Vance was a woman of sweet spirit and good judgment and proved herself a very fine teacher. At the close of her term of service she was married to Professor S. F. Belknap of the Anglo-Japanese College, Tokio. Mrs. Belknap died in Japan, September 27, 1892. Her sister, Mrs. Raikes of Moberly, Mo., founded a library in her memory in the Aoyama Seminary, where she taught, and it is called the Mary Vance Belknap Library.



MARY BELL GRIFFITHS.



MISSIONARY SOCIETY
— OF THE —
METHODIST EPISCOPAL CHURCH.

A. B. LEONARD, Cor. Sec.
H. K. CARROLL, First Asst. Cor. Sec.
W. F. OLDHAM, Asst. Sec.
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E. R. SMITH, Editor, "Gospel in All Lands."

CABLE ADDRESS: MISSIONS.

150 FIFTH AVENUE,

NEW YORK, SEPTEMBER 10, 1901.

DEAR BROTHER:

The Secretaries have constant need of the information asked for in this circular. It was sent to all our foreign missionaries in 1896, and the replies are on file. But new missionaries go to the field, and additional information is needed from those who kindly made response five years ago.

Will you fill out the blanks for yourself and family and return to this office promptly?

Yours sincerely,

THE MISSIONARY SECRETARIES.

(Please answer these questions AS NEARLY AS POSSIBLE with the data at hand.)

1. Place and date of answer *Khairwa India November 25th 1901*
2. Full name of missionary and date of birth *David Gushwa Abbatt*
Born December 2nd 1863
3. Nationality *American*
4. Date of appointment to our work *Transferred September 4th 1900*
5. Bishop appointing *Transferred by Bishop Wilson on request of Bishop Hoburn*
6. Date of departure from home to engage in our work *Left New York Oct. 31st 1900*
7. Date of arrival on the mission field *Reached Bombay Dec. 7th 1900*
8. Has service under this Society been continuous since your first appointment? If not, when, why, and how long was it interrupted? *Service has been continuous.*
9. Fields of labor and dates (month and year) *Sikhistan, appointed Dec. 1st 1900*
10. Present residence *Khairwa, Central Provinces, India*

11. Employment at the present time *Missionary in charge of M. E. Mission Khandwa*
12. Date of marriage *September 10th 1895*
13. Wife's full name... *Martha E. Day*
14. Date of wife's birth *January 23rd 1865*
15. Children's full names and date of birth respectively (and date of death, if any have died)
- Carol Eleanor Abbatt. Born, July 21st 1899*
- Harold ... " Jan. 18. 1906*

RETURN HOME.

16. Names of persons returning, dates, and reasons of return (if more than one return state these particulars in each case)

17. Dates of leaving to return to the field, and names of persons returning

18. Name and address of person who is your representative in the United States in family matters.

- Rev. J. E. Newsom, West Liberty, Iowa*
- Mrs. M. A. Roberts, of ...*
19. Code name to indicate said representative in cable messages *Jess MEd*

The Late Rev. G. Abbott

G. BARNEY THOMPSON,

It was my privilege to live in the Abbott home for three years, my first in India. The setting was in Jubbulpore. I was doing English work and studying Hindi. Mr. Abbott was my adviser in both. His modesty regarding his use of Hindi was far below his attainment.

He never drove. He led, and bore a bigger part of the burden than he expected of his comrades in the work.

I was expected to learn to do Indian work while "doing" English work. One of the most profitable experiences we had was a long ride on bicycles into the villages of the District. My part was watching him and his faithful companion deal with the people. In one place they were erecting a building, in another baptizing believers and in another visiting in a Christian home. I came back full of the possibilities of living and working among the simple folk of the land.

Then I was given a class in English in the Thoburn Bible Institute, making it possible to reach the minds of the young men who were in training for Christian service. A task that had a direct bearing upon my future work, and within my possibilities at the time.

I was most touched when he came one day to share in some expense that I had, but expected no

help in. He had been helped in the same way and felt that I should share equally.

Blessed are the young missionaries who have as good a home in India as I found with the Abbotts.

Karachi.

F.W. Aug. 3, 1939.

he, with many others
went through there was so terrible that it could not
be described. Not only were the prisoners beaten,
but they were made to beat their friends and call them
the worst names that could be thought of. For two
whole days he got no food at all and after that only so
very little that it was entirely inadequate to maintain
health. He himself said to me in his broken English
that in the four years of the war he did not see anything
so terrible as what he saw the 8 days he was in prison.
"Yes," his wife said, "he does not know it, because I
do not want to tell him, but he often cries out at night
in his sleep in such agony that I can hardly stand it."
In speaking about learning English he said that he
could not put his mind on it yet,—but perhaps later, he
said, looking at me with tears in his eyes. At the end
of the conversation the lady said: "But through it all
I have a great faith in God. It *will* come right some
day because He has said so." I assured her that I also
have that faith, but I felt very unworthy to make such
a statement, for my faith has not been tried like hers
has, and how do I know that I would have come through
in quite so fine a manner—there was no hate evident
in anything she said or in her tone of voice."

Many have wondered what has been the fate of
the refugees after they reach Shanghai. Some light
is thrown on this phase of the problem by a statement
in the *China Christian Advocate* which has just been
received. We are reproducing it. India has been
caring for a few such refugees but we know nothing

classes. This makes a student body of thirty-nine in
the men's division and thirteen in the women's depart-
ment. The total number of students

(From Springfield Republican, Springfield, Mass. January 4, 1921.)

DROWNED TRYING TO SAVE DOG

Harold Abbott, 14, breaks through the ice at Paradise Pond, Northampton- Body is Recovered.

Northampton, Jan. 3- Harold Abbott, 14, son of Rev. David G. Abbott of Kensington Avenue, was drowned when trying to rescue a dog from drowning in Paradise pond this afternoon at 5 o'clock. Harold, who was deaf, Ernest Bergan, son of Mrs. Jerome J. Bergan of Harrison Avenue, who also is deaf, and two or three hearing boys were together on the shore of the pond when the accident happened. The two deaf boys were pupils at Clark school for the deaf, but it is now vacation at the school and these boys were living at home. One of the boys, whose name could not be learned this evening, had a dog with him, which ventured too near open water and fell in. The Abbott boy started to rescue the animal, in spite of efforts on the part of the Bergan boy to dissuade him. The ice proved to be treacherous and broke before the boy reached the struggling dog. The dog saved itself by its own efforts. The other boys raised the alarm, but no one was near enough to give effective aid.

The police were notified and dragged the pond until 8 o'clock to-night when the body was brought to the surface, about 20 feet nearer the shore than the point where the boy sank. Officer William O'Brien who was in a boat with officer Harry Kelly, raised the body, which was taken to Ely's undertaking parlors. The boy leaves, besides his parents, a sister, Carol, who is a student in Smith College. Mrs. Abbott has been living in Northampton to make a home for the children in school, and Rev. Mr. Abbott is now at home on a furlough from India.

DAVID G. ABBOTT

The Rev. David G. Abbott, a native of California, was graduated from Iowa Wesleyan University in 1892 and from Boston University School of Theology in 1895. In the latter year he was admitted on trial in Iowa Conference in which he worked until leaving for India in the fall of 1900. Mr. Abbott dates his interest in foreign missions previous to his conversion which occurred in August, 1886. When he became a student in Iowa Wesleyan he joined the Student Volunteer Band and from that time looked forward to entering the mission field. In September, 1895, he was married to Miss Martha E. Day, who had already spent five years in India as a missionary of the Woman's Foreign Missionary Society. Mr. Abbott was transferred to Bombay Conference in December, 1900, and appointed in charge of the work at Khandwa, Central Provinces District.

December 12, 1904.

FORM OF RECEIPT.

Place

New York City
Maria Day Abbott

Received this _____ day of _____ 192
the Certificate of my appointment as a Missionary of the Board of
Foreign Missions of the Methodist Episcopal Church, duly counter-
signed on behalf of the Foreign Missions Conference of North America.

(Signed)

Maria Day Abbott

BOARD OF FOREIGN MISSIONS
METHODIST EPISCOPAL CHURCH
NEW YORK

IV. Death of the Rev. David Gushwa Abbott

Ap. 5. 1. 24/

The Rev. David Gushwa Abbott died in Los Angeles, California, March 25, 1939. He was born December 2, 1863, in Cherokee, California, but obtained his education in Iowa at the Iowa Wesleyan University, from which he received a B.A. degree in 1892 and an M.A. degree in 1895. This same year he graduated from Boston University School of Theology. In 1900 Mr. Abbott sailed for India, where he served at Khandwa, Narsinghpur, Jubbulpore and Raipur, as educational and evangelistic missionary, District Superintendent, and the Principal and Manager of the Fisher Boys School, until his retirement June 30, 1933. September 10, 1895, Mr. Abbott married Martha E. Day, who survives him.

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or two citations at the suggest
the board and attempts to settle
points in direct conference betw
the contesting parties.
Arguments in three cases w.
completed. One involved the chang
ing of the home terminal of the C
olumbus-Portsmouth (O.) division fro
the former to the latter place; an
other asked for reclassification o
mine-run service, rating it under lo
cal instead of through freight rate
and the third involved branch lin
rates of pay.

STEAMER ARRIVALS

At Rouen, December 30: Keying
ham from Sydney, C. E.

At Flushing, December 31: Sedge
pool from Portland, Me.

At Liverpool, 1st: Shonga, henc
for St John, N. E. (was aground)
Royston Grange from Boston.

At Port Said, 2d: Boyne from Mon
treal.

At New York: West Modus from
Singapore, Orinoco from Havre, Allen
town from Port Lobos, Lysefjord from
Kingston, Shannock from Santos,
Mohnwk from San Juan, Javary from
Turks Island, Vitella from Glasgow,
Lake Pariston from Kingston, Vauba
from Buenos Aires; Munasar from
Antilla, Imperoyal from St John, D
B., Cantigny from Antwerp, Laplan
from Antwerp.

At Havre, December 30: La Tou
raine from New York.

At Liverpool, 1st: Baltic from Ne
York.

At Southampton, 1st: Imperato
r from New York.

Springfield Republican
Springfield, Mass.,
Impression⁵⁹ Jan. 4, 1927

made upon a Reader brings
Advertiser.

Impression is made is because
is successful in placing his
ad, concise way, with good

Abbott Day, Martha E.
Present Address

Wife of Husband
David S. Abbott, 10 Sp'95

Conference Relations
Des Moines Branch, '88;
FIELDS OF LABOR

Calcutta, Jan '88 - Jan '91
Principal, Girls' High
School, Jan '91 - Apr '94
in America Apr '94 - Dec '00
Bhandwa, Dec '00 -
Narsingapur Mar '08 - Mar '10
D. S. Abbott '13 -
P. P. Abbott, Va. '18 - F. '19.

TEACHER
From Kalona, Ia.
Birth 23 Jan 65
Appointed 31 Dec '88
Place Grafton, Wis.
Degrees A. B. Iowa Wesleyan Univ. '87 M. A. '90
Withdrawn
Death
No
CUTS, WWM | G A L | House
Phot.

Abstract from field: F 18 - Dec '22;
April '94 - Dec '00; Mar '10 - 25 '13.
AUTHOR OF

BIOGRAPHICAL
sailed for India, 17 Nov '88.
sailed 31 Oct '00
Signed declaration card of
Student Volunteer Mvt, '86

Personal interview, 3 May '10

Abbott, David Bushwa

Present Address
Wife or Husband
Martha E. Day 10, 5 '95

From
Kalona, Ia.

Birth	Appointed	Withdrawn	Death	No
2 D '63	24 S. 00			
Butte, Cal.	7 Dec '00			
Cherokee, Cal.		CUTS W W M	G A L	House

Degrees
B.S. Iowa Wesleyan, '42 M.A. '95
S.T.B. Boston U. Sch. of Theol. '45

Conference Relations
Sowa '95; Bombay '00; Central Provinces, 1905:
FIELDS OF LABOR

Furloughs
Mar. '10 - B. '11; Jan '20 - 11.21;
AUTHOR OF

Khandwa, 20 D. '00 -
Narsingpur 3 Mar '08 - 10
Hardwar 13 S. 12 - 14
and High Christian
(One institution)

BIOGRAPHICAL
Converted Aug. '86
Joined M.E. Church, June '86
Licensed to preach, 13 Mar '93
S. V. M. - signed declaration
Card in 1886 (in prep. dept.)
Sailed 31 Oct '00

Public Works:
Supt. Buldhara Dist. Ja. '12
and Theoburn Bib. Inst. '14 -

Charter member of Central
Provinces Mission Conf.

Raipur:
D.S. Raipur Dist. Ja. '18 -
Raipur - Supt. Raipur Dist., Raipur Boys'
School and Hotel, Dec. 1922 -

Personal interview 3 Mar '10.
" " 20 S. '21

Carol Eleanor, 21 July '99.

Harold David, 18 Jan, 1906. died Jan. 3, 1928 - drowned Northampton
Mass. in letter D. G. L. 5

Marcus Way, 12 July, 1902. (died 15 June, 1903) ^{7. M. W. Jan 7, 1901}

lished custom was given." "But assuming that such a custom had been proved, I am clearly of opinion that a custom whereby a person of good birth could be excluded from drawing water from a public well at the instance of certain persons of no better birth, merely because his religious convictions had undergone a change, would be a most unreasonable custom, which ought not to be enforced by any court of equity, justice, and good conscience in a cosmopolitical country like India."

"If a religion such as Christianity places all its converts on one level, for the purposes of other castes and creeds in matters of daily life, then things in which Muhammadans as such may share with Hindoos as such are equally open in reason to Christians as such. There can be no differentiation between Muhammadans and Christians in the matter of using public conveniences." "If a man, or a community, considers that he, or it, cannot take water from a public well or standard without contamination, the only remedy is to build or erect a private one. No court could support a custom by which excommunicants are prevented from the use of places and privileges enjoyed by the general public, including the particular community from which they have been excommunicated."

"In the eyes of Brahmans, and therefore in the eyes of all who consort with Brahmans, the plaintiff's position is that of a Brahman out of caste. It cannot be disputed that if he existed his caste offence according to the law and custom governing the sect in which he was born, he would be restored to the position he occupied before his proselytism. It is out of the question that such a person, during the time of his excommunication from caste, should not use a public well which is used without objection by Muhammadans and Barbers. The courts of law cannot differentiate between the members in caste and those out of caste, in relation to absolutely public rights, even if it be assumed that they can do so in rights appertaining only to the particular caste from which excommunication has been made..... The whole fabric of the defence went to pieces in this case, the moment it was admitted that the well was a public well."

D. G. Abbott

Narsinghpur, C.P., March 15.

N.B. This same article was printed in "THE INDIAN WITNESS" of April 1st, 1909 Page 247 (7) under the title, "THE PUBLIC WELL AND THE NATIVE CHRISTIAN."

Khandwa, Dec. 27, 1907

Dear Mr. Dick:-

I am enclosing copies of the correspondence with Mr. James regarding the Pandhana well.

Also some observations on the final decision of the District judge, Mr. Deo.

Kindly let me know if there is anything else I can do to help in the case.

Do you know yet when we will get a hearing?

Very sincerely

D.G. Abbott

Wellesley, Naini Tal, June 9, '05

Dear Mr. Mayes:-

One of our workers, Narbada Prasad, of Pandhana, writes me that the Police Inspector of that place has ordered him to stop drawing water from the public well. Narbada has been drawing water there for about six months and before going there he was in Narsinghpur District where he drew water from the public wells and I never heard that anybody questioned his right, and since being in Pandhana he has not drawn water from wells of low caste people. Before becoming a Christian he was a Brahman. I am writing Narbada not to stop drawing for he has as much right to draw water as the Police Inspector has. This I believe is in accordance with your decision on the question which came up about two years ago.

I only write you at this time lest the matter should be reported to you in my absence and you would not know what advice I had given to Narbada.

Very Sincerely,
D.G. Abbott

(Reply)

Khandwa 13-6-05

Dear Mr. Abbott:

I saw Narbada myself in Pandhana last cold weather and gave him distinct orders that he was not to touch the well himself under any circumstances whatever. I have also received a report from Pandhana that owing to his using the well the people have been put to considerable expense in reconsecrating it and I am now issuing orders that if Narbada Prasad attempts to draw water again from that well, he is to be arrested and prosecuted at once. He attempted to be impertinent to me at Pandhana and evidently has to be taught that when I give orders I mean them to be carried out. I strongly recommend you therefore to cancel your advice to Narbada Prasad, more especially as there is another well nearby.

Yrs. Sincerely
H.F. Mayes.

Wellesley, Naini Tal, June 15, 1905

Dear Mr. Mayes,

Yours of the 13th relating to Narbada Prasad was received this morning. My workers reported to me that when you were at Pandhana last cold season it was arranged that the Police should get a Brahman water carrier for Narbada, and the Police, unable to find one, told Narbada to draw water until one could be found. He was drawing water when I was there and I heard no complaints about it. I wrote to Narbada as I did because you had written me that a Christian has every right to the public well or words to that effect. I am quite sure that that is the same well from which our Christian workers have heretofore drawn water and I have always understood that it was a public well. However, if this is a mistake I should be very thankful to you if you could kindly let me know the location of a good public well in Pandhana from which the higher castes draw water.

I am writing to Narbada to leave his work and go into Khandwa until the matter can be arranged. Awaiting your reply, I remain,

Very Sincerely
D.G. Abbott

Khandwa 29-6-05

Dear Mr. Abbott:-

Feeling sure that no native police officer would tell a Christian to draw water from a high caste well I have had enquiries made at Pandhana and find that no such permission was given as claimed by Narbada Prasad, nor do I recollect telling the Police to provide a Brahman to draw his water. What I do remember telling him was that he was not to touch this well and I trust you will now reiterate this order. There are other wells nearby, e.g. one in the field of Badulla Kasai, from which he can draw if he can get the owner to agree to it.

Yours sincerely, H.F.Mayes.

M.E.Mission, Khandwa, July 24th, 1905

To H.F.Mayes, Esq.
Deputy Commissioner, Nimar, C.F.

Dear Sir:-

With reference to the correspondence relating to Narbada Prasad's drawing water from the public well of Pandhana I beg to enclose a copy of an extract from an article in which are quoted Government rulings respecting the rights of Native Christians to the use of public wells, and hope it may receive your consideration.

Yours sincerely, D.G.Abbott

No.3865 From H.F.Mayes, Esquire I.C.S.
Deputy Commissioner

To Rev.D.G.Abbott
M.E.Mission School, Khandwa.

Dated Khandwa, the 25th July 1905

Sir:-

In reply to your letter dated 24th July 1905 regarding Narbada Prasad and the Pandhana well I have the honor to state that I have read the enclosures but do not see my way to alter my decision, more especially as there are other sources of water available.

I have the honor to be, Sir,
Your most obedient servant,

W.G.Slaney E.A.C.
For Deputy Commissioner Nimar.

W.E.

B.K.B.

Observations on the Decision of District Judge S.P. Deo regarding the randhana well case.

1. "Inexpedient and impolitic ... when the Hindus particularly object to it from a keen sense of religious conviction."

Is this interpreting or making law? Christians also have a keen sense of religious conviction, and so resent being denied such a common right simply because they are Christians.

"It appears to me that before the suit ... there was no occasion for the village community to assert its right to exclude Christians."
"There is no clear and reliable evidence on record to show that these Christians have been openly and peaceably using the well."

On both these points see testimonies of -
Ariel o.4.p. "I daily drew water for three years with my own hand at any time of day or night. I used to draw water at the same time as Brahmans and others of the village. Babu Lal Das, Gopal Patwari, Pullu Istri, Ram Prasad Kolar saw me draw water, knowing that I was a Christian."

Witness 5.p. testified- "I have seen witness o.4.p. draw water from the Baligi well with his own hands."

Witness 6.p. "I have seen plaintiff's wife fill water openly for six months. Vittal Teli, Lal Das, Ram Prasad Kolar, and Chalai Teli saw plaintiff's wife draw water."

Witness 1.d. "I know the plaintiff. He used to draw water from the well for two or three months. His wife also used to draw."

Witness 2.d. Plaintiff used to draw water during the 8 months.

Why is it necessary to assume that the testimonies of these men are not reliable?

Witnesses Nos. 4.p. and 6.p. are ordained men in the Methodist Episcopal Church and their characters are passed upon publicly every year. Further, there is nothing in the testimony to impeach their characters.

"...it is not to be said that the witnesses are not reliable because of their conversion to Christianity because it is not to be said that those who convert to Christianity are not reliable because of their conversion."

So the witnesses are not reliable because of their conversion to Christianity because it is not to be said that those who convert to Christianity are not reliable because of their conversion."

"In case of conversion to Christianity..."

Neither the plaintiff nor any other Christian can be said to be at fault in respect of the well without the plaintiff or any other Christian (if the plaintiff or any other Christian is at fault in respect of the well without the plaintiff or any other Christian)..."

" Possibly bloody feuds."

Should the law be interpreted in deference to the disobedient? A Police outpost is there and also a hospital.

" They could easily draw water from another well."

Contrary to fact. No testimony to support it. There are other public wells there, but the Hindus are no more ready to permit Christians to draw from them than they are from this one.

2nd Issue. Due notice was not taken of the fact that the well was taken over by the Government. As per witness 6.d. after removal, and also the written statement of the defendants that it was dedicated to the public. It was admitted to be a public well. Access to a Hindu well is not restricted for.

Christians draw water from the well, as per witness 1.d. also 7.d. who was "bhisti" for 12 years, A Mohomedan.

Copy of Judgment in Narbada Prasad Plff. vs. Jhabarsinh Defdt.

Claim for drawing water from a well. Civil Case No.27 of 1906.

In the Court of Mr.R.H.Collins, Sub-Judge, Nisar, at Khandwa.

Dated 24-9-06

Suit No. 27 of 1906

Judgment.

The plaintiff is a native convert to Christianity and prays for a declaration of his right to take water from the well, known as "Babjee Kus" in Pandhana, and for and an injunction against defendants not to interfere with his drawing water therefrom. It is admitted that the well is a public one, fed by natural springs, and that Banishs, Brahmins, Chatries, and Mohamedans have the right to draw water therefrom.

It is also admitted that on or about 1-6-05 the defendants applied in writing to the Dy. Commr. of Nisar to stop the plaintiff drawing water therefrom as he had no right to do so, and that since then and by reason of this application the plaintiff is prevented from taking water from the well in question. The plaintiff's case is that he was born a Brahman and became a Christian about nine years ago. That Christians have the right to draw water from this well. The defendants do not know plaintiff's caste prior to his conversion. That by an ancient custom and long established caste rules Christians and low caste people have been excluded from using this well since its dedication to the public 100 years ago by one Nakhari Dass Babjee, and that defendants have acquired by the custom of the country and caste rules and by prescription the right to prevent plaintiff from touching the well. That the application to the Deputy Commissioner was on behalf of the whole village community and that therefore as the permission for its institution was not obtained the suit does not lie. That the suit is not maintainable by this court under section 2 of the Civil procedure code, as it involves a caste question. That plaintiff is not entitled to the injunction claimed by reason of (1) the custom and caste rules above mentioned (2) the absence of the Court's permission to institute the suit (3) want of necessity as Christians for past 9 or 10 years without touching this well (4) that the injunction if granted would put the majority of the village people to great inconvenience as the well could be of no use to them (5) that the plaintiff has no personal interest in the matter and he would not be inconvenienced if the majority be refused and (6) the direct motive of the plaintiff is to create a status for low caste converts to Christianity by offending the religious feelings of the majority of the village people. Defendant Rankisson (no. 22) denies that he executed the petition to the Deputy Commissioner and that he did not prevent the plaintiff from using the well.

The plaintiff joined issue on all points. The following issues were framed (1) Was plaintiff a Brahman before his conversion to Christianity (2) if so did his conversion take away from him the rights he had as a Brahman to draw water? (3) As a Christian has he a right to take water from the well in question? (4) Is there a valid ancient custom, and are there long established caste rules which would exclude plaintiff from taking water from this well? (5) Have defendants by this custom, and these rules acquired the right to prevent plaintiff from touching the well?

(6) Does the suit not lie for reasons given in para.5 of defendants' written statement and did defendants apply on behalf of the whole village? (7) Is the suit not cognizable by this court for reasons given in para.6 of defendants' written statement? (8) Is the plaintiff not entitled to the injunction claimed for reasons given in paras.4 and 5 of defendants' written statement? (9) Is there no necessity for plaintiff to take water from this well and for this reason should the injunction prayed for not be granted? (10) Would there be the inconvenience alleged in para.7(c) of defendants' written statement and would this be a reason for not granting the injunction? (11) Has plaintiff no personal interest in the matter and would he experience no inconvenience if the injunction be not granted, would this be reason enough for not granting the injunction? (12) Have Christians drawn water from this well in past years? (13) Is there cause of action against defendant No.22 Ramkissona? Plaintiff examined 6 and defendants 7 witnesses.

Issue 1. On this point there are three witnesses (Nos.1,2, and 3). The last of these is the plaintiff himself. I see no reason to doubt his veracity. In the witness box he struck me as a straightforward and truthful witness. He is moreover supported by witnesses 1 & 2. There is absolutely no rebutting evidence from either side to show that plaintiff was some other caste before his conversion. I hold that plaintiff was a Brahman before his conversion.

Issue 2. No doubt a Hindu after his conversion loses certain rights he enjoyed under the Hindu law but the right here claimed was not one acquired under law, and I do not think he loses it by his conversion. Supposing for the sake of argument that plaintiff had turned a Mohammedan, he would as such still have the right to take water from this well, for the defendants admit that Mohammedans can use the well in question. I hold that plaintiff's conversion to Christianity did not take away from him the rights he had as a Brahman to use this well.

Issues 3,4,5. The defendants have quite failed to prove ancient custom and long established caste rules as pleaded. It is in evidence that native Christians have come to live in Pandhana only during the last 19 years. Such being the case no such caste rules as set up in the defense could have been created, as no necessity for them arose till very recently. In fact as soon as the plaintiff went to Pandhana he began to use this well and wit. 4p who is a native Christian used the well for three years or 4 years from 1888 A.D. and his evidence shows that other Christians in the village at the time also used the well. He is supported by wit.5p. Keso, who however did not himself attempt to use the well having been a Balahi before his conversion. I must find then that there are no caste rules or custom which prevent plaintiff using this well and therefore defendants have got no right to prevent plaintiff using it. As already shown, if a Mohammedan (with whom a Brahman will not dine) can draw water from the well in dispute, there is no reason why the plaintiff, who was before a Brahman, should not use it.

Issue 6. There is nothing in the evidence to show that the application to the Deputy Commissioner was made on behalf of the whole village. I hold it was not so made. Consequently the latter part of the issue need not be determined.

Issue 7. Does this suit involve a caste question and is it not cognizable by this court? This is the question and I have to answer

My answer that the case is cognizable by this court, and that although it may be incidentally necessary to determine caste usages, the point is not for caste rights, and privileges, but for the right and privilege the plaintiff claims as a citizen.

Issue 8. It follows from the decisions on the two foregoing issues that the plaintiff is entitled to the injunction he claims. In para 4 (of written defense) Defendants say "low caste people have been excluded from drawing water from this well." Having found the plaintiff an ExBrahman, I cannot include him amongst the low caste people. With reference to para 5 of the defendant's written statement no sanction is necessary as the case is filed only against certain individuals who obstructed plaintiff's rights.

Issue 9. It is for the defendants to prove that there is no necessity for plaintiff to use the well in question, and they have not established the want of necessity. The well in question is 30 paces from plaintiff's abode. The next nearest is 250 paces (vide deposition of witness 6.p). The defendants should have shown that there is another well, within reasonable distance from the mission house, which plaintiff could use without obstruction or opposition. Therefore under this head there is no reason against the grant of the injunction asked for.

Issue 10. Of all defendant's witnesses only Nos.1,2, and 5 say they cannot use this well if plaintiff does. The other witnesses do not use the well or do so only at times. Thus defendants, on whom the onus lies, have not proved general inconvenience to the public should the injunction be granted. I hold there would be no such inconvenience as that pleaded.

Issue 11. Plaintiff is living in the village. He must get his water from somewhere. He asks for the injunction on his own behalf and not for the Christian Community of the village. He has then a personal interest in the subject matter of the suit.

Issue 12. I find no cause of action against defendant 22 as it is not proved that he signed the petition to the Deputy Commissioner, or that he prevented the plaintiff from using the well.

To conclude then, the well in question is a public one. Brahmans and Mohomedans can (admittedly) use it, therefore plaintiff, who was once a Brahman and is now a Christian, has the right to use it. That right is not an illegal one and can be enforced. All the defendants (except No.22) have injured that right by depriving the plaintiff from use of the well.

Under these circumstances I am of opinion that the plaintiff is entitled to the injunction he begs for.

I wish it to be distinctly understood, however, that this judgment deals with plaintiff's personal rights. His success in this suit does not entitle each and every native convert to Christianity to use the well in question. The suit was not filed on behalf of the Christian community, but of the individual plaintiff.

I decree the suit with costs against all the defendants, except defdt 22 as against whom the suit is dismissed. His cost (if any) will be borne by plaintiff.

Sd/ R.H. Collins
Judge

24th September 1906
Khandwa, C.P.

True copy
Clerk of Court
District Judge's Office 30-10-06

Remand 1.

Copy of order D/19-12-06 in appeal No.197 '06 passed by

R.H.Macnair Esq.I.C.S. District Judge, Nimar, from the decision in Civil case No. 27 of 1906. Narbada Prasad vs. Zabarsingh. In the Court of Mr. R.H.Collins, Sub Judge, Khandwa.
Dated 24-9-06

ORDER

In this case an issue was framed whether the majority of the village people would be put to great inconvenience, because the well would be of no use to them. It appears that the parties took this to refer to the amount of inconvenience.

The evidence shows that the main point in dispute between the parties is whether the use of the well by the plaintiff would render it useless to the defendants.

If it be a well-known rule throughout the provinces that a Christian who has intercourse with ex-mahars, pollutes a well by drawing water from it, and there is no difference of opinion on the point whether a subsequent user of the well should be put out of caste, the defendants have a fairly strong case.

On the other hand, ignorant villagers who refuse to drink in consequence of obsolete rules can hardly complain of trifling inconvenience caused thereby.

Probably the defendants would admit this were the inconvenience caused by the Christian seating himself in the only available railway carriage. It appears necessary to frame additional clear issues.

I direct that the Lower Court hear additional evidence, and return findings on the issues framed yesterday and approved by the parties. Evidence before the lower Court on 5-2-06. Finding to be returned to me on 15-2-06. Objections to be presented within 7 days of return.

Sd/ R.H.Macnair
Distt Judge 19-12-06

True copy Vishnu Paul
Clerk of Court
District Judge's Office
Nimar
6-9-07

Copies of Issues framed by the District Judge, Nimar.

ISSUES

- (a) Would the usage of a well by the plaintiff and defendant jointly result in loss of caste by the latter?
- (b) What is the opinion of credits of surrounding Districts on the point?
- (c) Are persons of castes similar to those of defendants invariably considered out of caste after they have used a well in conjunction with a Christian?
- (d) Are the objections of the defendants due to ignorance of existing caste rules?

(Sd) R.H.Macnair, District Judge
18-12-06

True Copy
Sub-Judge, Nimar 10-1-07

Copy of findings Dated 1-7-07 in Marbada Prasad vs.
Jhabarsingh. Civil case No.27 of 06 In the court of
A.H.Collins Sub-Judge Khandwa. Dated 24-9-06

Decision on issues sent down.

(a) All defendant's witnesses say the well in question becomes polluted by plaintiff's touch, but no one seems to have put the question to the test and no has been actually outcasted. Most of the defendant's witnesses on the stand seem ignorant of their own caste rules on the subject and simply assert, that plaintiff's touch pollutes because he associates with Chamars and Balahis. They do not say he pollutes the well because he is a Christian.

(b) The evidence of two pandits has been recorded and neither can point out any written authority in their books for holding that a Christian's touch pollutes a well for a Hindu's use. In fact when the pandit's books were compiled, perhaps there were no Christians, or the law given had none before his mind's eye. Witness 4d. says people included in the word "patith" are outcastes, but he seems very mixed as to what a patith really is. At one time during his examination he seemed to think Mohamedans were not "patith" and later he thought all non-Hindus were "patiths". Further ahead he seemed inclined to the opinion that a person who changed his religion would be a "patith", yet he averred that "a Hindu who becomes a Mohamedan can use the well." At the close of his cross-examination this witness said the word "Antiaj" referred to Sudras and he could not say if Christians and Mohamedans were "Antiaj".

The other pandit (witness 5) took his stand on the word "Chandal", which he said meant those who took the burial clothes from a corpse, as the Balahis do in these parts. This witness admits that Christians do not take the burial clothes. He further stated that "any caste man who does not take funeral clothes and does not associate with a Chandal can be a "chandal".

The inference is that plaintiff is not a chandal unless he associates with Balahis. But Mohamedans seem to associate with Balahis as Christians do and they do not pollute a well by their use of it.

Thus then the defendants have not shown any opinion, worth the name of pandits in the surrounding districts. The 2 pandits examined have no opinion and seem incapable of giving one. Each has said that plaintiff's touch would contaminate the well to defendants, but have entirely failed to give good reason and authority for so saying.

(c) No case has been cited in which any Hindu has actually been outcasted for using a well alone with plaintiff, and it seems to me that (d) the objection of defendants are due entirely to ignorance of caste rules.

The plaintiff has adduced evidence to show that in Jabalpur, Narsingpur, Washencabad, Betul native Christians and Hindus use the same wells without prejudice to the latter's caste.

Even in Khandwa, there is evidence to show that, plaintiff and Brahmans might use the same water standard and even the same tank without prejudice.

For these reasons I must hold that the use of the well by plaintiff and defendants should not according to the Hindu Scriptures result in loss of caste to the defendants, that no one has yet been outcasted for so using and that defendant's objections are due to ignorance of their caste rules.

The onus of adducing evidence on issue (b) lay on defendants
the evidence they have adduced is not of corroborating. It is not
before that pandits' opinion on the surrounding districts
is against parties using the well together.

Let these findings be forwarded to the appellate court.

sd/ R.H. Collins
Sub- Judge
1-7-07

True copy
Vishnu poule
Clerk of courts, Niner
12-7-07

Copy of order in appeal No. 197 '06 passed by S.P. Deo Esq.
District Judge, Nisar on 5-8-07 from the decision in Verbedas Prasad
vs. Zabarsinsh, Civil case No. 27 of 06 in the court of Mr. R.H.
Collins Sub-Judge, Thandwa. 24-9-06

In the court of the District Judge of Nisar,
before S.P. Deo. Appeal No. 197 of 1906

ORDER

This appeal has arisen out of a suit brought by the plaintiff for
an injunction to restrain the defendants from preventing him from
using a well.

The allegations in the plaint are:-

- " 1" That in Monza Pandhana in the Thandwa Tahsil there is a well
known as "Salaji Kur", and is situated near the Lalaji temple be-
hind the Government Dharmasala. It is a public well and is fed by
natural springs. The general public such as Brahmins, Barais,
Mohamedans, Christians and native Christians have a right to draw
water from this well.
- " 2" The plaintiff was a Brahmin by birth and his father's name was
Karanju Dibe and the plaintiff and his father were residents of
Narsinghpur District, but about 9 years ago the plaintiff embraced
Christianity. The plaintiff has the same right to draw water from
the well as other castes have.
- " 3" About 1-6-05 the defendants made a written application to the
Deputy Commissioner, Nisar to the effect that the plaintiff has no
right to draw water from this well, that by his so doing the well
is polluted and since that date the defendants do not allow him
to draw water from the well. The cause of action accrued on
2-6-05 at Monza Pandhana in the Thandwa Tahsil.
- " 4" The plaintiff therefore prays for a declaration that he as
native Christian has the same right to draw water from the well as
other castes viz. Brahmins, Mohamedans, Kshatriyas, and Christians
etc. have and that therefore the defendants cannot prevent the
plaintiff in any way in future from drawing water from the well,
a decree to this effect be granted with costs against the defend-
ants."

In their written statement the defendants admitted para I of the
plaint but the defendants stated that Christians and native converts to
Christianity have no such right as alleged therein.

It was admitted that the plaintiff was a native convert to Chris-
tianity, but the defendants asserted that they were not aware of
his status. It is admitted that para 2 of the plaint
was denied.

The allegations in para 3 of the plaint were admitted.

The court has considered the facts and circumstances of the case, and
(1) that when the defendants applied to the Deputy Commissioner
for stop in the plaintiff from touching the well in question they
did so on behalf of the whole village community and that the pres-
ent suit could not be entertained as the court's permission for
its institution had not been obtained, and (2) that the suit in-
volving a caste question is not cognisable in a civil court under
section 11 of the code of Civil procedure. As regards the first

objection which was embodied in issue No.6. the court remarked "there is nothing in the evidence to show that the application to the Deputy Commissioner was made on behalf of the whole village. I hold it was not so made. Consequently the latter part of this issue need not be determined."

This point is not pressed in appeal and I need not therefore consider it. However, I may say that the suit was not a representation suit, or even designed or framed for the purpose of binding for all time the whole Hindu Community at Pandhana, if there is anybody that can be so described and if such a suit be were competent. It was a suit against certain persons alleged to be wrongdoers in their individual capacity.

As regards the 2nd objection which was embodied in issue No.7 the lower court considered that the right asserted in the plaintiff was one of a civil nature which vested in the plaintiff as a citizen that its connection with religious or caste observances was not of itself sufficient to preclude the plaintiff from complaining of what he considered to be an infringement of such right or the civil courts from adjudicating upon it and protecting its exercise if it really existed in law. As regards this point I think the decision of the learned judge is correct. The right which the plaintiff claimed in the plaint and which he asked the court to protect was a right of access to the well for drawing water from it and the ground of claim was that prior to his conversion to Christianity he had that right and that he did not since it forfeit it by reason of such conversion. The question whether with reference to its prerequisites the right continued to exist after his conversion was one which related to the merits and whatever might be the decision in regard to it, the right was in its nature one which the plaintiff respondent was at liberty to assert as a citizen and which the courts were bound to adjudicate upon. It may be that an enquiry as to religious or caste usage or as to the religious foundation for the excommunication pronounced by the caste rules is indispensable to coming to a correct decision. But when the right claimed is asserted to be of a civil nature and one which is within the cognizance of the civil courts they are bound to hold such enquiry as is to the exercise of the jurisdiction vested in them by law.

Turning to the merits of the main pleas raised by the defendants were those embodied in paras 4 and 7 of their written statement, viz. para. 4. "that the well in question was originally built by one Makkhan Das Babaji who dedicated it to the public nearly a century ago. That by ancient custom and long established caste rules Christians and low caste people have since the dedication been excluded from drawing water from the well in order to prevent contamination by their touch. Thus the defendants have acquired a right by the custom of the country and caste rules and prescription to prevent the plaintiff from touching the well." Para 7 "The plaintiff is not entitled to the injunction claimed on the following grounds: (a) for reasons mentioned in paras 4 and 5 of this written statement (b) There is no necessity for the injunction as Christians have lived in the village for the last nine or ten years without any necessity of touching the well. (c) that the injunction if granted would put the majority of the village to great inconvenience as the well would be of no use to them. (d) the plaintiff has no personal interest in the matter, the injunction would put him to no inconvenience (e) that the indirect motive of the plaintiff is to create a status for low caste Converts to Christianity by offending the religious feelings of the majority of the village people."

I reply, the plaintiff denied the allegations in paragraph 4 of defendant's written statement. As regards the alleged customs, it was averred that, if proved, it would not be valid and binding on the plaintiff, and that it was, on the face of it unreasonable, inasmuch as it allowed Mohammedans access to the well in question and denied that right to the Christians. Turning to para 7 of the defendant's written statement the plaintiff stated, "Christians have lived in the village for the past nine or ten years but not continuously, but there have been breaks in their stay. They have always got their water from this identical well by personally drawing it. Plaintiff also personally drew water from this well for 6 months before the date of the defendant's application.

The inconvenience mentioned in 7 (c) is denied. As to sub para (d) the plaintiff has a personal interest in the matter. There are other public wells within the village abadi, but the nearest is 250 paces further than the well in suit from plaintiff's house.

Sub para (e) is denied. The grounds mentioned in para 7 of defendant's written statement do not preclude the court from granting the injunction asked for."

Omitting the preliminary issues, the main issues that were framed for trial were:-

1. Was the plaintiff a Brahman before his conversion to Christianity?
2. If so, did his conversion take away from him the rights he had as a Brahman to draw water?
3. As a Christian has he a right to take water from the well in question?
4. Is there a valid ancient custom and are there long established valid caste rules which would exclude plaintiff from taking water from this well, and do they bind plaintiff?
5. Have defendants by this custom and these rules acquired the right to prevent plaintiff from touching this well?
6. Is the plaintiff not entitled to the injunction claimed for reasons given in paras 4 and 5 of defendant's written statement?
7. Is there no necessity for plaintiff to take water from this well and for this reason should the injunction prayed for not be granted?
8. Would there be the inconvenience alleged in para 7 (c) of defendant's written statement and would this be a reason for not granting the injunction?
9. Has plaintiff no personal interest in the matter, and would he experience no inconvenience if the injunction be not granted, and would this be reason enough for not granting the injunction?
10. Have Christians drawn water from this well in past years?

On issues No. 1 and 2 the Lower Court's finding was that the plaintiff was a Brahman before his conversion to Christianity, but that his conversion to Christianity did not take away from him the rights he had as a Brahman to use the well.

On issues Nos. 4 and 5 the Lower Court found that there are no caste rules or custom which prevent plaintiff using the well and that therefore the defendants have got no right to prevent plaintiff using it.

On issue No. 6 the finding was that the plaintiff was entitled to the injunction claimed. As regards the issue No. 7 the finding was that there was no reason against the grant of the injunction.

On issue No. 8 the Lower Court held that there would be no such inconvenience as was pleaded.

On issue No. 9 the finding was that the plaintiff had a per-

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sonal interest in the subject matter of the suit.

The Lower Court gave no finding on issue No.12.

On these findings the plaintiff's claim was decreed and the defendants preferred an appeal to this court on the following grounds:-

1. That the Lower Court was wrong in deciding issue No.1. in plaintiff's favor in the absence of sufficient evidence.
2. That the Lower Court ought to have considered that native Christians like the plaintiff dine with Balahis and these Balahis have no right to draw water from the well in suit. On these findings of the Lower Court on issues Nos.2 to 5 and 8 are wrong.
3. That the Lower Court was wrong in deciding issues Nos.10 and 11.

On the appeal coming on for hearing my learned predecessor Mr. Macnair remanded the case under section 566 C.P.C. for trial of the following issues:-

- (a) Would the usage of a well by the plaintiff and defendants jointly result in loss of caste by the latter?
- (b) What is the opinion of pundits of surrounding districts on the point?
- (c) Are persons of caste similar to those of defendants invariably considered out of caste after they have used a well in conjunction with a Christian?
- (d) Are the objections of the defendants due to ignorance of existing caste rules?

The findings given by the Lower Court on all the additional issues are against the defendants appellants and no objections have been filed against those findings.

It is contended in the first place that the Lower Court was wrong in finding that the plaintiff respondent was a Brahman before his conversion to Christianity but from the evidence of the plaintiff who put himself into the witness box read with the evidence of Lalloo (P.W.1.) and Bhayalal (P.W.2.) I agree with the finding arrived at by the Lower Court, viz. that the plaintiff was a Brahman before his conversion to Christianity.

Before entering into the merits of the case it is desirable to note first the matter in controversy between the parties. The matter in controversy is the effect which conversion to Christianity has upon the plaintiff's right of access to the well. The defendant's case was that the plaintiff though he might be a Brahman, ceased to be on the same footing with other Brahmans and became an outcaste by reason of his conversion to Christianity and intercourse with low caste people such as Balahis etc. and as such lost his right to the use of the well, while the plaintiff's contention was that it in no way impaired status as a Brahman to use the well. The question for determination was, what was the nature and extent of caste status necessary according to the usage of the well to the exercise of the right.

The first contention in appeal on behalf of the plaintiff respondent was that assuming that the plaintiff became an outcaste by reason of his becoming Christian, the right now claimed by him was saved by Act XXI of 1850: Section I of that enactment provides "So much of any law or usage, now in force within the territories subject to the Government of the East India Company as inflicts on

any person forfeiture of rights or property, or may be held in any way to impair or effect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion or being deprived of caste, shall cease to be enforced as law in the courts of the East India Company and in the courts established by Royal Charter within the said territories." It is on these provisions of law the contention is rested but they do not appear to support it. They were clearly not intended to repeal the usage of Hindu Community or of religious or quasi-religious institutions. A rule of determination is looked for in the case of such institutions in their usage because it is an index to the intention of those who founded and endowed them. A compliance with such intention is the accepted basis on which those who claim the benefit of using those institutions can sustain their right to such benefit and unless the plaintiff retains his status as a Brahman or a member of that section of the Community for whose benefit the well exists, it is difficult to see how he can be regarded as coming within the object with which they are founded and maintained.

The right asserted is from its very nature not a right of property which may be conceived to exist independently of caste or religion but it is a joint right to be exercised conformably to caste usage to the extent recognized by it so as not to contravene the equal rights of other members of the caste who are similarly interested in the well. Any other view as to the basis of the plaintiff's right would be inconsistent with the doctrine of Neutrality which forms part of the British Judicial system. As administered in India and also with the fact that a long series of legislative provisions have been enacted for the purpose of securing to the people of India the maintenance of their ancient law, amongst others, in matters of inheritance and succession. And many minor enactments have been passed to facilitate the administration of the laws so preserved. The object and principle of this legislation has been throughout to enable the people of various races and creeds in India to live under the law or usage to which they and their fathers had been accustomed and to which they were bound by so many ties. The grounds of claim disclosed by the plaint itself was that the respondent's status as a Brahman received no taint from his conversion to Christianity, but I think the reasonable construction of the enactment cited above as saving the plaintiff's rights is that a right consisting in the participation along with other members of a caste appropriated to the members of the caste is not within their purview.

This being so, the further question arises whether the Lower Court is right when it says, "As already shown if a Mohammedan (with whom a Brahman will not dine) can draw water from the well in dispute there is no reason why the plaintiff who was before a Brahman should not use it."

The learned Subordinate Judge apparently confounds the functions of the judiciary with those of the reformer. In administering Hindu law the former has only to see what is the Hindu law as received and practiced by the Hindu Community in general with the conviction that it is law and to declare and to enforce it when it is ascertained. It is not for him to go beyond to resolve the Hindu law as received by the people into its historical factors to see how far its historical development has diverged from the logical or philosophical development in the light of modern civilization and to reconstruct a system of Hindu law which the people ought to have received and followed, as consistent with their Shastras, when the courts find that the Hindu law as evidenced by the

usage of the community based on the conviction that it is law they alight upon positive authority serving as the basis of a judicial decision and it is immaterial to them how that usage originated and how the conviction of the orthodox Hindu Community that what they practice is founded upon their Shastras was generated. The Hindu law which the courts are bound to administer is the law as received by the Hindu community and that no other conception of Hindu law to be administered by the courts is either Judicial or rational. If it were otherwise the courts might have to force upon the Hindu community of this country the several portions of obsolete Hindu law which existed at some former time and has since fallen into disuse.

If those who once conformed to such usage depart from it the legal relation between them and those who still conform to the usage is that of the orthodox party and the secessionists in regard to the matter of doctrine or caste practice. There is no state church in India nor is there any recognized ecclesiastical court of the Hindu religion, and the Hindu religion is not the state religion. The only jural basis on which their respective relations to religious or caste institutions can rest is that of viewing them as endowed institutions or voluntary associations founded or formed for caste or religious purposes as evidenced by their immemorial usage, endowment deeds, if any, and the presumable intention of those who founded them. It is in such intention or the original trusts of the institution that a rule of decision must be found in the case of a dispute between the orthodox party and the dissenters. The only questions which I have to consider are what were the usage of the well in dispute. As regards admission to it for drawing water at the date of the suit or the presumable intention of the founder as regards such admission and whether according to such usage or presumable intention of the foundation those who secede from the caste custom as to conversion to Christianity are outside the class of beneficiaries. As regards the specific right in contest, viz. of admission to the well for purposes of drawing water with regard to the intention of the founder and the usage or custom. The defendants put their case thus in para. 4 of their written statement:—"that the well in question was originally built by one Mathan Das Baliji who dedicated it to the public nearly a century ago. That by an ancient custom and long established caste rules Christians and low caste people have since the dedication been excluded from drawing water from the well in order to prevent contamination by their touch. Thus the defendants have acquired a right by the custom of the country and caste rules and by prescription to prevent the plaintiff from touching the well."

(D. 41.) says, "I know the well called 'Balaji' well" by G. N. S. It is three paces across. Hindus and Mohammedans draw water from this well..."

Before answering these questions further enquiry appears to be necessary. No specific issue was recorded with reference to the usage of the well, or its original trusts. I must therefore direct that the following specific issues be tried and findings returned.

(1) Whether the general custom of the Hindu community drawing water or entitled to draw water from the well mentioned in the plaint continued to prohibit at the date of the suit Christians from drawing water from the well.

(2) If so, whether according to the usage of the well mentioned in the plaint or according to the original and recognized

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intention of the foundation, regard being had to its close proximity to a Hindu temple and to the customary mode of treating those who transgress general caste customs and thereby lose or impair their caste status those Brahmans who embrace Christianity are excluded from the use of the well by the original and recognized trust of the well.

The findings to be returned within two months from the date of the receipt of this order and seven days after the posting of the findings in this court will be allowed for filing objections. Both parties to be at liberty to adduce fresh evidence.

5th August 1907 Sa/ S.P. Deo,

District Judge

Court of District Judge, Nimar
Khandwa.

True Copy

Vishnu Paule
Clerk of Courts
District Judge's Office
Nimar

6-9-07

Copy of Decision D/ 13-9-07 after remand in
Marbada Prasad vs. Zabarsingh; Civil Case No.27 of 1906
In the court of Mr.R.H.Collins, Sub-Judge, Khandwa
Dated 24-9-06

Decision.

The issues sent down are:-

1. Whether the general custom of the Hindu Community drawing water or entitled to draw water from the well mentioned in the plaint, continued to prohibit at the date of suit, Christians from drawing water from the well?

2. If so whether according to the usage of the well mentioned in the plaint or according to the original and recognized intention of the founder regard being had to its close proximity to a Hindu temple and the customary mode of treating those who transgress general caste customs, and thereby lose or impair their caste status, those Brahmans who embrace Christianity are excluded from the use of the well by the original and recognized trust of the well.

The defendants have examined 10 witnesses. Five of these witnesses say they never saw Christians using the well in question. This is all the evidence on the first issue. From this evidence it would appear that the well was not used by Christians and there was therefore no need of any prohibition. But the most of the witnesses (including some Mohammedans) allege that the touch of a Christian be he a convert from Mohammedanism or Brahmenism violates the well and makes it unfit for their use until purified.

It is clear that Christians have dwelt in Pandhana only during the last 10 years, they were never seen or known there before that, therefore it seems to me that there is no custom or usage in Pandhana old enough to exclude Christians whether born so, or recon-verted from Brahmans, and that all there is seems a prejudice of about 10 years' standing which cannot in the eye of the law operate to exclude Christians.

As to the intention of the founder of the well there is no evidence, due I think to lapse of many years, but the fact that Mohammedans were not excluded would point to a broadminded founder who placed no restrictions on the use of the well by the people of the village.

The close proximity of the well in question to a Hindu temple has now to be considered.

The Defendant's own witnesses had to admit that the well was dug by one Lakshan Das, a Babaji who had a temple of his own near the well. This temple is now no more, it has been demolished and a Government Serei now stands on the site it once occupied, and a bazar adjoins.

Lakshan Das built the well to provide water for the upkeep of a garden he had around his own temple. It must be assumed that he made the well on his own land, i.e. land belonging to his temple. Since Government has taken up the site of that temple it is not hard to believe what has been urged viz. that the well went with that site and should by right now belong to the serei. The fact that Government now keeps the well in repair would lend colour to this view.

The temple which now stands near the well in question is called Lalldass Mandir. (witnesses Bhagund and Sheikh Lal). In the plaint the mandir standing near the well is stated to be Balaji Mandir.

2.

All the witnesses that Brahmans who change their religion should be excluded from the use of this well, none of them however cite any authority for this proposition which seems to emanate purely from their own prejudice against persons so discarding their religion.

Thus I cannot find that on date of suit Christians continued to be prohibited from using the well by reason of the custom referred to in issue No.1. sent down; or that that was any exclusion in respect of this particular well by usage, or intention of its founder, or its proximity to the temple, or by customary treatment of Brahmans who change their religion.

Costs in these proceedings as per schedule below will follow the result or be borne as the appellate court might direct.

Sd/ R.H.Collins

Sub-Judge 13-9-07

Schedule of costs after 2nd re and

By Plaintiff By defendant

Process fees	-8	9-
Traveling and other for witnesses	1-	1-
	<u>1-8</u>	<u>10-</u>

Sd/ R.H.Collins

Sub- Judge 13-9-07

Court of District Judge, Nimer

True Copy Vishnu Paule
Clerk of Court
District Judge's Office
Nimer

8-10-07

Copy of Decree by Appellate Court in appeal No.1907 of '07
passed by the District Judge of Nimar from the decision
Civil Case No.27 of 1906: In the court of R.M.Collins,
Sub-Judge, Khandwa, 24-9-06.

Decree by Appellate Court
Court of S.F.Deo Esquire, District Judge, Nimar

Appeal No. 197 of 1906

1. Jhabarsingh son of Sardarsingh Rajput
 2. Ramasa son of Sondrusa Bania
 3. Gopal son of Srijlal Brahman
 4. Rukhdusa son of Keshosa Bania
 5. Motisa son of Unkarsa Bania
 6. Bhagwansa son of Chhitarsa Bania
 7. Chajjulalsa son of Chhitarsa Bania
 8. Champa lal son of Amarchandasa parwad
 9. Sobhagural son of Salamchand Bania
 10. Mahakalsa son of Dongrusa Bania
 11. Lachiransa son of Rupchandasa Bania
 12. Misrilalsa son of Thakarsa Bania
 13. Lalchand son of Parasram Bhanpta
 14. Fattusa son of Govindasa Bania
 15. Bhikasa son of Lakunsa Bania
- of Pandhana Tahsil Khandwa, Appellants

Narbada Prasad son of Karanju Dube, native Christian of
Khandwa, Respondent.

Appeal from the decree of the court of Mr.R.M.Collins, subjudge,
Khandwa, Dated the 24th day of September 1906

Appeal

Narbada Prasad, Plaintiff.

1. Jhabarsingh, 2. Ramasa, 3. Gopal, 4. Rukhdusa, 5. Unkar, 6. Motisa,
7. Bhagwansa, 8. Chajjulalsa, 9. Champalalsa, 10. Sobhagural,
11. Mahakalsa, 12. Lachiransa, 13. Misrilalsa, 14. Ramasa,
15. Mahaklal, 16. Lalchand, 17. Fattusa, 18. Sabhusa, 19. Shikasa
20. Mohanlal, 21. Bihari, and 22. Rankishenwa. Defendants.

The Defendants Nos.1,2,3,4,5,6,7,8,9,10,11,12,13,16,17, and 20
above-named appeal to the court of the District Judge, Nimar, against
the decree of the Subordinate judge, Khandwa, in the above suit dated
the 24th day of September 1906 for the following reasons namely:-

1. The lower Court was wrong in deciding issue No.1 in plaintiff's
favor in the absence of satisfactory evidence.
2. The lower Court's finding on issues Nos.2 to 5 and 8 is wrong
inasmuch as it did not take notice of the evidence on the
record that native converts to Christianity like plaintiff
eat and drink with Balahis and Balahis have no right to draw
water from the well in question.
3. The lower Court has erred in deciding issues Nos.10 and 11 in
the face of the evidence relied on in ground No.1 above.

This appeal coming on for hearing after remand on the 9th day of October 1907 before S.P.Deo, Esquire, District Judge Ninar in the presence of Chunilal Agent for the Appellant Ramasa and of Mr.H. Mitra Bar-at-law for the Respondent, it is ordered that the judgment and decree appealed against be and are hereby set aside and in lieu thereof it is hereby ordered that the plaintiff's suit be and is hereby dismissed and that the costs (Sec 579, Act.14 of 1882) of this appeal, as per schedule below including the costs after remand under section 566 C.P.C. in the Lower Court amounting to Rupees 175-8 together with the costs in the original suit be paid by the plaintiff (Respondent).

Given under my hand and the seal of this Court this 27th day of November 1907. Sd/ S.P.Deo. District Judge. 29/11/07

Amount of costs incurred in this appeal (Section 579, XIV of 1882)

Details	By Appellant			By Respondent		
	Rs.	As.	p.	Rs.	As.	p.
Court fee for memorandum of appeal	21	4				
Mukhtarnama	1					
Wahalatnoma	1					
Exhibits (copies)	1	8				
Process fees		4				
Traveling and other expenses paid for witnesses	0	0				
Pleader's fees on Rs.270	13	8		13	8	0
Copy sheets	2	7				
Court fees on application		8				
Total	80	0	0	13	0	0
Costs after remand in Lower Court	38	0		82		
	80	0	0	95	0	0

Seal
Court of District Judge
Ninar, Khandwa.

= 175 - 0

True Copy
Vishnu Paule
Clerk of Court
District Judge's Office
Ninar
4-12-07

Copy of Judgment in appeal No.197
1906

passed by S.P.Deo Esq, D.J.Ninar on 27-11-07 from the decision in Marbada Prasad vs. Jhabarsingh, Civil case No.27 of 1906,
In the court of Mr.R.H.Collins Sub.Judge, Khandwa.
Dated 24-9-06

In the Court of the District Judge, Ninar.
Before S.P.Deo Appeal No. 197.1906

Final Judgment

The facts of the case have been fully set out in the remand order of this Court dated 5-8-07 and I need not recapitulate them here. Suffice it to say that the case was remanded to the Lower Court for the trial of the following issues:-

1. Whether the general custom of the Hindu Community drawing water or entitled to draw water from the well mentioned in the plaint continued to prohibit at the date of the suit Christians from drawing water from the well.
2. If so according to the usage of the well mentioned in the plaint or according to the original and recognized intention of the foundation, regard being had to its close proximity to a Hindu temple and to the customary mode of treating those who transgress general caste customs and thereby lose or impair their caste status, those Brahmans who embrace Christianity are excluded from the use of the well by the original and recognized trust of the well.

The Lower Court has found both the issues against the defendants-appellants who have filed objections to those findings. I will consider these two findings in their chronological order, but before doing so, I will briefly set forth the principles and authorities which in my opinion govern the present case. The cases reported in I.L.R.17 Allahabad 87 XX All.200 and 23 Bombay 565 all point to the conclusion that the right in suits of this nature is not an easement nor is it a customary easement within the meaning of section 18 of the easements act for the latter section implies some right of ownership or occupation or habitation of some particular place. It is a customary right or a right by custom which is preserved by section 2 of the easements act.

The nature of the right enjoyed in such cases by the general public or a limited portion thereof in the absence of a grant is well discussed in the case of Ashraf Ali vs Jagannath (I.L.R.6 All:497) There the inhabitants of a certain village were using a plot of land in the said village for the purpose of burning the "Holi" and celebrated the ceremonies incident thereto at the time of the Holi festival. Adjacent to this was a house which came to be owned by a Mohammedan. The latter for the first time caused a Tazia to be placed on the land. The plaintiffs the inhabitants of the village sued for restraining the defendant from interfering with their right. It was held that the plaintiffs had no proprietary interest in the land, that the claim they asserted was not an easement as there was no dominant heritage for the servitude to attach and that the right claimed was a customary right, that the right of the inhabitants was to burn the Holi only on certain days, that they had no right on other days, that the placing of the Tazia by the defendant at other times could not interfere with plaintiff's rights and that as it was not proved that the defendant's desecrated the place, the plaintiffs had no cause of action.

Then again rights may be claimed by the whole or a part of a Hindu Community (vide I.L.R.9 Cal.75) but from the nature of some of these rights other classes such as Mohammedans are excluded from their benefit. A fluctuating body of persons such as a village community is even capable of owning property. According to Hindu Law (see for instance L.R.16 i A 48; I.L.R.28 Bom.21 at Pages 49 and 50)

Then as regards limitation, no fixed period of enjoyment is laid down by law as necessary to establish a customary right (I.L.R.20 Mad 389), and the character and length of enjoyment which are necessary for such purpose have been laid down in Kuar Sen vs Namman (I.L.R. 17 All.87). Having made these preliminary observations on the principles, scope, and spirit governing such and such like cases as deduced from available Judicial authorities I will now consider the Lower Court's findings.

In dealing with the 1st issue, the learned Judge says:-

" The defendants have examined ten witnesses. Five of these witnesses say, they never saw Christians using the well in question. This is all the evidence on the first issue. From this evidence it would appear that the well was not used by Christians and there was therefore no need of any prohibition, but most of the witnesses (including some Mohammedans) allege that the touch of a Christian be a convert from Mohamadanism or Brahmanism violates the well and makes it unfit for their use until purified. It is clear that Christians have dwelt in Pandhana only during the last ten years. They were never seen or known there before that, therefore it seems to me that there is no custom or usage in Pandhana old enough to exclude Christians (whether born so or recruited from Brahmans) and that all there is seems a prejudice of 10 years' standing which cannot, in the eye of the law, operate to exclude Christians."

I am constrained to dissent from the views expressed by the Lower Court for reasons contained in I.L.R.20 Madras 389 which as I have already pointed out requires no fixed period of enjoyment as necessary to establish a customary right. Then as regards the Lower Court's observation that " all there is seems a prejudice of 10 years' standing which cannot in the eye of the law operate to exclude Christians," I would hesitate to take this as correctly representing the state of religious feelings past or present in India more particularly in out-of-the-way and backward parts. From time immemorial the Hindus properly or improperly, entertain prejudices against members of a different religious persuasion on certain matters, so much so that it has now become the just and settled policy of Government not to interfere with the religious beliefs or persuasions of the natives of India. This being so, it will be highly inexpedient and impolitic to force the Hindus of Pandhana to allow the Christians who are ostracised by the very fact of conversion to draw water from the well in dispute, -when the Hindus particularly object to it from a keen sense of religious conviction.

Apart from these considerations it appears to me that before the suit or for the matter of that till the time an application (Ex.P.I.) was made to the Deputy Commissioner, there was no occasion for the village community to assert its right to exclude Christians from the use of the well in spite of the fact that the Christians have been admittedly residing in the village for the last 10 years. The mere fact that they had no occasion to assert that right so long does not mean that the right does not exist. Moreover, there is no clear and reliable evidence on record to show that these Christians have been openly and peaceably using the well for it may be that they exercised that privilege stealthily and behind the back of the villagers.

This fact has more than sufficiently been proved by the plaintiff's own witnesses Nos. 4,5,6, and 1 after remand. The evidence of these witnesses is vague and conflicting and if any weight

is to be attached as all, it only supports the defendants' story viz. that the use, if any, of the well by the Christians has not been open and peaceable.

Even assuming for the sake of argument that the Christians at Pandhana occasionally drew water from the well in question it cannot be said that the villagers had any knowledge of their conversion to Christianity because I take it that these converts still retain their original habits of life and mode of dress - more particularly having regard to the backwardness of the locality.

Another instance of perpetual injunctions the consideration of the balance of convenience and inconvenience is not neglected by the court. The principle is well established that in granting or withholding an injunction, the courts exercise a judicial discretion and weigh the amount of substantial mischief done or threatened to the plaintiff and compare it with that, if the injunction, if granted would inflict upon the defendant (vide Woodroffe on Injunctions page 25).

In my opinion the granting of the injunction will in future cause endless and costly blood feuds between the parties, and in the second place the Christians would not be put to any great inconvenience or hardship as they could easily draw water from another well which admittedly is about 200 yards from the well in suit.

For the reasons given above I decide the first issue in the affirmative.

As regards the 2nd issue, viz. what the intention of the founder was in sinking the well, there can be no doubt that he was an orthodox Hindu who also built a temple for the benefit of the members of his own community. The close proximity of the temple to the well presumably shows that the water of the well was originally intended for the use of the worshippers of the temple. This view is amply borne out by the evidence of some of the defendants' witnesses. The fact that the old temple has ceased to exist from whatever cause arising has no bearing upon the point and I will therefore pass over that portion of the Lower Court's findings which deals with it without any further comment.

I therefore decide the 2nd issue also in the affirmative.

The result is that I allow the appeal, reverse the judgment and decree appealed against and dismiss the plaintiff's suit with costs here and hitherto incurred.

27th Nov 1907
District Court of ...

J. S. R. Doo
District Judge

W. S. R. Doo
District Judge
4-12-07

Copy of Judgment in Second Appeal No.18
of 1908 passed by E.J.Stanvon Esq C.I.E.
Addl;Judl Comm, C.P. on 9-12-08 from
the decision of the appellant court in

Civil case No 27 of 1906 - Harbadda Prasad vs Zabarsinh
in the Court of Mr R.F.Collins Subordinate Judge Khandwa
Dated 24-9-06
1-7-07

Second Appeal No 18 of 1908

Judgment

Dated 9th December 1908

The suit out of which this appeal arises was instituted so far
back as the 11th January 1906, and should have come to an end long
ago but for the vagaries of the District court in first appeal.
The plaintiff is one of a small colony of native Christians who have
established themselves in the village of Kondhara in the Nisar
District.

It is proved that the plaintiff was born a Brahmin, but became
a convert to Christianity about 9 years ago, after which he came to
live in said village. On the 1st of June 1905 the defendants re-
spondent who originally comprised 15 persons, namely 1 Brahmin,
1 Rajput, 1 Parwar, 1 Bharwa, and 11 Banias, applied to the Deputy
Commissioner of Nisar for an order prohibiting the plaintiff from
using a certain well. At the same time the defendants took the law
into their own hands and physically prevented the plaintiff from
drawing water from the said well. Thereupon before any final orders
had been passed on the above application the plaintiff filed the
present suit. The plaintiff states that the dispute relates to a
well known as "Balaji kua" which is situated near the Esaji tem-
ple and behind the Government Dharmshala; that it is a public well
and is fed by natural springs; that the general public such as
Brahmins, Kshetriyas, Banias, Mohammedans, Christians and native
Christians have a right to draw water from this well; that the
plaintiff is a Brahmin converted to Christianity; that the defend-
ants had wrongfully restrained the plaintiff from drawing water from
the said well and had alleged that his urine so contaminated the
water. Upon these allegations the plaintiff claimed a decree de-
claratory of his right to use the well and for costs of the suit and
the interest thereon.

The plaintiff states that the defendants are in the possession of

1. The plaintiff states that the defendants are in the possession of the well and have wrongfully restrained him from drawing water therefrom.
2. The plaintiff states that the defendants are in the possession of the well and have wrongfully restrained him from drawing water therefrom.
3. The plaintiff states that the defendants are in the possession of the well and have wrongfully restrained him from drawing water therefrom.
4. The plaintiff states that the defendants are in the possession of the well and have wrongfully restrained him from drawing water therefrom.
5. The plaintiff states that the defendants are in the possession of the well and have wrongfully restrained him from drawing water therefrom.
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7. The plaintiff states that the defendants are in the possession of the well and have wrongfully restrained him from drawing water therefrom.
8. The plaintiff states that the defendants are in the possession of the well and have wrongfully restrained him from drawing water therefrom.
9. The plaintiff states that the defendants are in the possession of the well and have wrongfully restrained him from drawing water therefrom.
10. The plaintiff states that the defendants are in the possession of the well and have wrongfully restrained him from drawing water therefrom.

quired a right by the custom of the country and caste rules and by prescription to prevent plaintiff from touching the well.

5. When the defendants applied to the Deputy Commissioner of this District from stopping the plaintiff from touching the well in question they (the defendants) did so on behalf of the whole village community. The present suit cannot be entertained as the court's permission for its institution has not been obtained.
6. The suit involving a caste question is not cognizable in a civil court under section II of the civil Procedure Code.
7. The plaintiff is not entitled to the injunction claimed on the following grounds-
 - (a) For the reasons mentioned in paras 4 and 5 of this written statement.
 - (b) There is no necessity for the injunction as Christians have lived in the village for the last 9 or 10 years without any necessity of touching the well.
 - (c) That the injunction if granted would put the majority of the village people to great inconveniences as the well would then be of no use to them.
 - (d) That the plaintiff has no personal interest in the matter. The injunction if not given would put him to no inconvenience.
 - (e) That the indirect motive of the plaintiff is to create a status for low caste converts to Christianity by offending the religious feelings of the majority of the village people.

The plaintiff in reply denied the alleged custom, and disputed it as unreasonable. He also controverted the other allegations, and in particular states that Christians at Pandhana had always got their water from the well in dispute, and that plaintiff himself had done so when he was in the village some six months before the present dispute arose. He admitted that there were other public wells in the village, but that the nearest of them was 250 paces further than the well in suit from his house. This last allegation was not controverted and I accept it as correct. The issues were most carefully drawn by the subordinate judge and fully covered the pleadings.

The plaintiff examined six witnesses in the first instance, including himself. Three of them including himself proved that he was a Brahman by birth who had been converted to Christianity. The other three were Christians who deposed to the use of the well by Christians without objection until the present dispute arose. The defendants examined seven witnesses in the first instance. The first Laldas Babaji, a mendicant, said that he had seen plaintiff using the well but not other Christians, and that he had stopped taking water when plaintiff began to use the well. He never saw anyone stop plaintiff from using the well. Govind Ram Rangari (w.p.2) used the well and says he stopped when he saw plaintiff use it. Linda (w.D.3) a Kunbi gave evidence about a well in his own village which people would not use after Christians used it. Nana Lohar (w.D.4) uses the well in dispute. So does Vithal Nai (w.D.5), Misri Lal Banis (w.d.6) lives 1500 paces away and does not use it. While Sahibdin, a Mohammedan Bhisty has drawn water from the well for 12 years, and knows that the Christians began to do the same 4 or 5 years ago whereupon all the village people stopped using it. Upon this evidence the sub-judge

in a well reasoned judgment gave the plaintiff a decree with costs. He took the view that a change of religion did not convert the high born plaintiff into a low caste and he did not thereby forfeit the right to draw water from a public well which he could have used as a Brahman. The subjudge entered upon no theological or caste controversy, and though a Christian himself, worded his judgment in no sectarian spirit. He also expressly laid down that his finding was with particular reference to the plaintiff and not to all converts to Christianity.

The case went in appeal by the defendants before an inexperienced judge, who with the best of intentions, and philanthropy, dealt with it in an academic theoretical manner, and starting a somewhat new case for the defendants arising out of the arguments before him, referred back for trial and finding the following issues:-

- (a) Would the usage of a well by the plaintiff and defendants jointly result in loss of caste by the latter?
- (b) What is the opinions of pandits of surrounding districts on this point?
- (c) Are persons of castes similar to those of defendants invariably considered out of caste after they have used a well in conjunction with a Christian?
- (d) Are the objections of the defendants due to ignorance of existing caste rules?

Both parties examined fresh witnesses and a mass of opinions inadmissible under the evidence act, were recorded and the absurdity and inconsistency of some of them were made very clear in the findings submitted by the subjudge. As might have been anticipated, there could be no decisive findings on the issues referred back. So far as they went the findings left the validity of the subjudge's decree unaffected.

The appeal now came before another District Judge who happened to be a Maratha Brahman, and who, I regret to say, approached a consideration of it from an obviously caste and sectarian point of view. Instead of dealing with the dry law and facts of the case, he arrogated to himself the right to set down an exposition of Hindu law and orthodoxy for the benefit of the subordinate judge whom he characterized as one who had apparently confounded the functions of the judiciary with those of the "reformer". Such a remark was wholly unjustifiable and I have no hesitation in expressing my strong disapproval of it. The whole judgment of the District judge convinces me that it would have been better if the appeal had not been tried by him, and if it were necessary to send it back, I should feel bound to transfer it to some judge who was less interested in or at any rate better able to regard with calmness and impartiality the caste questions raised by the litigation. The result of the second venture before the District court was another set of issues referred back for findings. The issues were two in number and worded thus:-

- (1) Whether the general custom of the Hindu community drawing water or entitled to draw water from the well mentioned in the plaint continued to prohibit at the date of the suit Christians from drawing water from the well.
- (2) If so, whether according to the usage of the well mentioned in the plaint or according to the original and recognized intention of the foundation, regard being had to its close proximity to a Hindu temple and to the customary mode of treating those who transgress general

caste customs and thereby lose or impair their caste status, those Brahmans who embrace Christianity are excluded from the use of the well by the original and recognized trust of the well.

Compare these issues with the pleadings, and it becomes sufficiently manifest that this remand order was not the production of a judge but of an advocate for the defence. Mr. Deo is no inexperienced officer who does not know his law and procedure, but he regarded the conversion of plaintiff not as a judge but as an orthodox Brahman. I can sympathize with him as a man, but I can not approve of this discharge of his judicial responsibility. He converted the defendants into the "Hindu Community." For the rest, the first part of the issues referred back by him was a repetition, in a form more approved by him, of a question already tried out and decided by the subjudge after the parties had been given an opportunity of producing evidence thereon.

The second issue treating the well as restricted by an endowment, and so forth, was wholly outside the pleadings and irrelevant. The case went back and the defendants examined 10 more witnesses 3 Brahmans, 4 Banias, 2 Mahomedans, and a Rajput, who states facts that were of negative value e.g. that they had not seen Christians using the well, and opinions that are irrelevant, e.g. that Brahmans converted to Christianity pollute water by touching it.

The subjudge found on both issues against the defendants. This however had no effect on the District judge who having avoided the pleadings and issues and without any proper consideration of the evidence, has reversed the subjudge's decree and dismissed the suit upon conjectural grounds. He conjectures without evidence that the well must have been built as a private endowment for the exclusive use of worshippers of the temple. It matters not in his opinion that both temple and worship have ceased to exist; nor does he trouble to enquire why Government repairs the well. It matters not either that the evidence shows that Mohammedans who eat beef and have no more caste restrictions than Christians as to those with whom they associate have consistently used the well with Hindus. The ghost of an imagined trust haunts the well and guards it against Christians generally and in particular against that transgressor against general caste customs, a Brahman who has embraced Christianity.

It would be easy to show how utterly wrong the District judge has gone. He claims to be an exponent of the policy of Government. It is indeed fortunate for the varying castes and creeds, and for freedom of conscience and religious conviction in this country that the policy of Government is the diametric opposite of what it is stated to be by the District judge - that it is entirely devoid of the intolerance and bigotry which stand out in the judgments of Mr. Deo. It is not, however, necessary to discuss those judgments any further than to say that all the remand orders were wrong: that the case pleaded had been fully tried and decided by the first court in its first judgment and that the District judge has decided the appeal upon irrelevant and conjectural grounds. We are not now concerned with any case of Hindu versus Christians, nor am I able to imagine what sort of conglomerate body is represented by the term "Hindu Community." The case is one which can be decided without anything more than Mr. Collins had before him when he first decided it. The learned

advocate for the defendants-respondents did his best for them by an endeavor to explain away the clear admission made in the written statement that the well is a public well, used by all castes of the community, excepting only Christians and low castes. There is not one word in the pleadings about any original trust or proximity to the temple, or the like. The defence was based on local custom and on prescription. On the face of the facts there could be no acquisition by prescription in respect of the right to draw water from a public well. No such right could have been acquired against Christians in particular in the ten years or so they had been at Pandhana when this suit arose. For the same reason there could have been no provision made against Christians by the original founder of the well, supposing that he ever made any provisions at all beyond a pious declaration that the well was for the benefit of mankind generally. Under these circumstances a heavy onus lay on the defendants to prove the existence of a local custom which excluded Christians and low castes from a well to which all other castes and classes of the public had access for drinking purposes. No evidence of any such continuous and old established custom was given. The evidence on defendant's side was either that Christians had not used the well, or that they had used it and therefore other people had ceased to use it. Upon this evidence the Subjudge legally found the custom unproved, and the District judge could not legally have differed from that finding. But assuming that such a custom had been proved, I am clearly of opinion that a custom whereby a person of good birth could be excluded from drawing water from a public well at the instance of certain persons of no better birth merely because his religious convictions had undergone a change, would be a most unreasonable custom which ought not to be enforced by any court of equity, justice, and good conscience in a cosmopolitical country like India.

If a religion, such as Christianity, places all its converts on one level, for the purposes of other castes and creeds in matters of daily life, then things in which Mohammedans as such may share with Hindus as such are equally open in reason to Christians as such. There can be no differentiation between Mohammedans and Christians in the matter of using public conveniences. But I can understand that with the higher castes of Hindu birth is the first consideration: and so far as I know, no self-respecting Brahmin would care to be on the same carpet, or share the same well, or sit in the same vehicle with one of the scavenger caste, such as a Chamur or a sweeper, whether such Chamur or sweeper retained the caste and religion to which he was born or changed it for any other. I can understand and I would be prepared to sustain a custom which excluded such low castes from a particular well but only in a very clear case. Public places are open to all and the law is no respecter of persons in regard to the common rights of all. But in this country reasonable local customs are regarded with tenderness and sustained as far as possible. Thus an originally public well might, by a long course of usage accepted by the whole community, have become a well of Brahmins, or a well of Banias, or of any other sect only, and the courts would always be loth to disturb such an arrangement. But, in general, if a man, or a community, considers that he, or it, cannot take water from a public well or standard without contamination the only remedy is to build or erect a private one. No court could support a custom by which excommunicants are prevented from the use of places

and privileges enjoyed by the general public including the particular community from which they have been excommunicated.

In the eyes of Brahmins, and therefore in the eyes of all who consort with Brahmans, the plaintiff's position is that of a Brahmin out of caste. It cannot be disputed that, if he expiated his caste offence according to the law and custom governing the sect in which he was born, he would be restored to the position he occupied before his proselytism. It is out of the question that such a person during the time of his excommunication from caste, should not use a public well which is used without objection by Mohammedans and barbers. The courts of law cannot differentiate between the members in caste and those out of caste in relation to absolutely public rights even if it be assumed that they can do so in rights appertaining only to the particular caste from which excommunication has been made. A court which might sustain the exclusive from a social club, or a particular place of worship of a member expelled therefrom by the authorized management would certainly help him against obstruction from going into a public park or place of public amusement. The whole fabric of the defence went to pieces in this case the moment it was admitted the well is a public well. If instead of launching out into the ethics of Hindu orthodoxy the District judge who decided the first appeal had directed careful enquiry into the question as to who repairs the well and who owns the site upon which the well is situated, he would probably have found out what is clear enough to everyone, namely, that the action of the defendants is wholly mistaken, and cannot be legally sustained.

For the above reasons I allow the appeal, and reversing the decisions and decree of the lower appellate court, I restore the decree of the subjudge as a decree personal to the plaintiff, a Brahman convert to Christianity. I direct that the defendants do pay all the costs of both parties in all three courts.

Sd/ H.J.Stanyon
Additional Judicial Commissioner C.P.

True Copy, Sd/ P.Eccles Registrar
Judicial Commissioner's Courts C.P.

(Seal) Court of District judge, Khandwa.

True copy A.E.Vail Clerk of Courts
District judge's office Nisar.

Copy of Decree by Judicial Commissioner's court in S.A.
No 18 of 1908 passed by H.J.Stanyon Esq.C.I.E. Addtl.Judl.
Commissioner C.P. on 9-12-08 from the decision of the ap-
pellate court in Civil case No 27 of 1906.

Narbadda Prasad vs Zabarsingh in the court of Mr.
R.H.Collins, subordinate judge, Khandwa. Dated 24-9-06
1-7-07

Decree by the Court of the Judicial Commissioner, Central Prov-
inces. Before H.J.Stanyon Esq.C.I.E. Additional Judl.Comm.C.P.
Second appeal No.18 of 1908 from appellate decrees.
Narbadda Prasad Appellant

1. Jhabarsingh 2. Ramasa 3. Gopal 4. Rukhdusa 5. Bhadwansa
 6. Motisa 7. Chajjalalsa 8. Champalalsa 9. Sobhajmal
 10. Lachuransa 11. Misrilalsa 12. Lalchand 13. Fathsa and
 14. Bhikasa Respondents.

Appeal from the decree of the court of Mr. S. P. Deo, District Judge, Nimar, dated the 27th day of November 1907.

Memorandum of appeal from appellate decrees.

Narbadda Prasad Plaintiff

1. Jhabarsingh 2. Ramasa 3. Gopal 4. Rukhdusa 5. Bhagwansa
 6. Motisa 7. Chajjalalsa 8. Champalalsa 9. Sobhajmal 10. Lachu-
 ransa 11. Misrilalsa 12. Lalchand 13. Fathusa 14. Bhikasa
Defendants.

The plaintiff above named appeals to the court of the Judicial Commissioner, Central Provinces, against the decree of the appellate court of Mr. S. P. Deo, District Judge, Nimar, in the above suit dated the 27th day of November 1907 for the following reasons, namely-

1. The well in question is a public well maintained by the Government. This has been proved to be so by the first court and not differed by the appellate court.
2. The appellant as a member of the public is entitled to use this well.
3. The appellant used the well before his conversion to Christianity and is still entitled to do so.
4. The well was originally built for the general public and has always been used by Mohanmedans and Hindus.
5. The lower appellate court is wrong in its finding as to user by other Christians.
6. The lower appellate court is wrong in with-holding the injunction on the ground of a possible breach of the peace by the respondents.

This appeal coming on for hearing on the 4th day of December 1908 before H. J. Stanyon Esquire, C. I. E. Additional Judicial Commissioner Central Provinces, in the presence of Mr. J. Mitre Bar-at-law for the appellant and of Sir B. K. Bose for the respondent No. 4 Rukhdusa and ex parte against the remaining respondents, it is ordered that the decree of the lower appellate court is reversed and that of subordinate judge as personal to the plaintiff is restored.

The costs (Section 579 Act XIV of 1882) of this appeal, as per schedule below amounting to Rs. 58-2- together with the cost of the appeal to the District judge's court, Nimar, and the cost of the original suit be paid by the defendants.

Given under my hand and the seal of the court this ninth day of December 1908.

Sd/ P. Eccles
 Registrar

Sd/ H. J. Stanyon
 Additional Judicial Commissioner C.P.

8.

Amount of costs incurred in this appeal (Section 579, XIV of 1882)

Details	By appellant	By respondent
Court fee for memorandum of appeal	Rs 21- 4	
Mukhtarnama or Takalatnama		Rs 2-
Exhibits	4- 2	
Process fees	3-12	
Pleaders fees on Rs.270-	13- 8	13-8
Total	<u>42-10</u>	<u>15-8</u>
		Rs.58-2

True Copy

Sd/ P. Reddy Registrar
Judicial Commissioner's Court C.P.

CHRISTIANS AND THE PUBLIC WELL

An article published in "THE BOMBAY GUARDIAN," March 27, 1909,
page 3, under "Correspondence."

To the Editor of "The Bombay Guardian"

Sir,-

A court decision establishing the right of a Native Christian to the use of a public well has recently been rendered by the court of the Judicial Commissioner, the highest court in the Central Provinces.

The decision is of special value and interest because of coming from so high a court. Similar cases have been before District courts, and a number have been decided by Deputy Commissioners in various parts of India, while the Ahmednagar case was referred in 1860 to the Secretary of State for India. This case however came before the civil court, and the fact that no precedent in any high court decision covering the case was found, may account some bit for its being so prolonged.

The case originated as follows:- A Brahman convert to Christianity was sent by the Mission to live in Pandhara, Nisar District. Objections were raised against his drawing water from a well near his house, which all acknowledged to be a public well. June 1st, 1905, 24 men of the village, representing several castes, applied to the Deputy Commissioner for an order prohibiting him from using the well, giving as their reasons that he had no right to draw water from the well and that by his doing so the well was polluted.

The question thus acquired publicity in the district, and it did not seem advisable to acquiesce in these claims of the complainants, thereby conceding that the water of a public well would be polluted by a Christian drawing therefrom.

A suit was therefore instituted against these 24 men in the civil court at Khandwa. The plaintiff prayed for a decree declaring his right to use the well, and for costs of the suit, and the issue of a perpetual injunction against the defendants. The case was filed January 11th, 1906, and on September 24th, 1906, the Subordinate Judge granted the decree prayed for. The defendants, however, appealed to the court of the District Judge, and after two remands the Judge of that court, November 27th, reversed the decision. The case was then appealed to the court of the Judicial Commissioner, and an Additional Judicial Commissioner of that court, December 9th, 1908, issued a decree containing the following important sentence,- "It is ordered that the decree of the lower appellate court is reversed, and that of subordinate Judge as personal to the plaintiff is restored." It was ordered also that the costs of the whole suit be paid by the defendants.

The following extracts from the judgment of the Judicial Commissioner (covering 53 pages) may be of interest:-

"The Sub-Judge, in a well reasoned judgment, gave the plaintiff a decree with costs. He took the view that a change of religion did not convert the high-born plaintiff into a low caste, and he did not thereby forfeit the right to draw water from a public well which he could have used as a Brahman.".....

....."The defence was based on local custom and on prescription. On the face of the facts there could be no acquisition by prescription in respect of the right to draw water from a public well."....

....."a heavy onus lay on the defendants to prove the existence of a local custom which excluded Christians and low castes from a well to which all other castes and classes of the public had access for drinking purposes. No evidence of any such continuous and old-estab-

Dec. Miss. b. 10
Dr. J. G. ...

A "FIRST"

by Carol E. Abbott

Jai Masih was the first, and possibly the only orphan, deaf and dumb, who learned to speak, and read and write, in the Methodist Mission in the Central Provinces, or perhaps in the Methodist Mission in India. A picture of Jai Masih with his teacher was published by Bishop B.T. Radley in "India Making, and Forsaking Gods" a publication of the Centenary Commission for India and Burma, also in the Epworth Herald of Jan. 13, 1916.

It happened in this way.

When Rev. D.G. Abbott was District Superintendent of Jubbulpore District, he and Mrs. Abbott went to Baihar, one of the important stations of the district, while Rev. and Mrs. T. Williams were on furlough.

Soon after arrival Mrs. Abbott noticed that her meals were always ready on time, but the cook was working in his fields until almost time for serving. She went to the cook-house, to investigate, and saw a young boy slip out of the cook-house. She asked the cook about the matter. He told her that the boy was an orphan, Jai Masih, "a deaf mute," who could not learn much in school with the other pupils, so Mrs. Williams had let him learn to cook.

Mrs. Abbott was interested immediately. Her only son, Harold, was deaf and had to be left in Northampton, Massachusetts, at Clarke School for the Deaf, the only school, she heard, in 1910, pioneering in the teaching of oral speech, discarding the finger alphabet entirely. She had spent three years in Northampton, watching the progress of her son with the teachers, and learned their methods in the classes. (You may recall that President and Mrs. Coolidge were much interested in the deaf, and Mrs. Coolidge taught in Clarke School before her marriage. Also an account of Clarke School is given in the National Geographic Magazine of March 1955--p. 379).

She thrilled at a chance to teach Jai Masih. She started at once to get acquainted with him, and found him a very willing and apt pupil. As her stay in Baihar came near an end, she decided she must take Jai Masih to Jubbulpore. Mr. Abbott thought she had enough to do already as teacher and head of the Women's Division of the Thoburn Biblical Institute, and other duties in the Mission and in the District. However, she insisted she could spend an hour a day with profit for the boy.

So Jai Masih went to Jubbulpore, helped the cook, and learned from an experienced butler, the work required in the house. Each day he had his lessons in speech and lip reading. Every sound and word he learned to utter had a meaning and he could read and write symbols for those sounds and Hindi words, in the Hindi script. The people around him could understand him, and he could understand them when they spoke those words. Soon he had courage to go out among strangers, to pick up balls for players on the tennis court, and he began to enjoy using his new means of communication. As the months went by he learned to buy food in the bazaars, and the cook said he

When Rev. and Mrs. Abbott were transferred to Raipur District Jai Masih was twelve years old and was assigned the work for which when the cook was absent.

He was a very willing and apt pupil. As her stay in Baihar came near an end, she decided she must take Jai Masih to Jubbulpore. Mr. Abbott thought she had enough to do already as teacher and head of the Women's Division of the Thoburn Biblical Institute, and other duties in the Mission and in the District. However, she insisted she could spend an hour a day with profit for the boy.

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by Carol E. Abbott

A "FIRST"
GIRLS IN INDIA PASS GOVERNMENT MATRICULATION

The Government Matriculation Examinations were held at Oudh and Rohilkhand. For 25 years a ceaseless effort had been made to prepare the girls. What was the difficulty? One was Mathematics! Who broke the record? Three girls.

"Those were the days when the common people of India knew nothing of the possibilities for education latent in their little girls. Twenty-five years had passed in the history of the Moradabad Girls' School, and the school had amply justified its existence, but as yet no girl had proved equal to a Government Grammar-School test. There were experienced missionaries to assure you that Indian girls would always fall down to a mathematics test. Their minds were unfit for mathematics. Nevertheless we set our stakes high. We would prepare some for the entrance examination - the equivalent to a High School closing examination." So said a Director years later.

"Mrs. Lois Parker had ~~attended~~ ^{run} the school from the time the first small girl was entrusted to her." She and her husband were being transferred. How could the Mission find to help her carry on this work? It happened that Bishop Thoburn knew of a mathematics and Latin teacher in the Calcutta Girls' School, a Miss Martha Day (to become, much later, Mrs. D. G. Abbott of the Central Provinces). Her first year she had been associate and friend of Miss Hettie Mansell, who was later in Moradabad. Miss Day had requested vernacular work, and was studying Hindustani and becoming familiar with English school methods and curriculum. He had promised to transfer her at the end of a year if she still wished it.

Thus Mrs. Parker found Miss Day a willing worker to whom to entrust her valued treasure. Mrs. Parker carried out a promise to this young, new missionary, to stay, to help and advise, until she gained confidence in her new duties. And Miss Day made the teaching of mathematics her own special task, (Jan. 1891)

The school prospered. To quote from a report, "The Public Inspector has visited and examined our school, told us our failings, and praised our good qualities, said he was 'highly pleased' with our school, its tone and quality of work done, thinks our grant-in-aid well earned, and hopes he will be able to secure more for us."

At the end of three years, three girls appeared at the appointed time and place for the Government Matriculation Examination. The official in charge was asked to see them. He had never heard of girls in India taking the Government examination. He asked for the necessary credentials. He was given papers properly completed, signed and in order. He hastily had screens put up to shut off a section of the room for the zenana, to satisfy what he believed to be requirements of propriety and purdah.

Thus three girls took the test. All passed the mathematics. What rejoicing there was! However, one entrant failed in Persian, but that subject was not held as Miss Day's responsibility.

Out of this experience came a thrill, when fathers urged the director to "keep" their children and "make them likewise efficient, as she was often distressed by losing pupils when parents decided it was time for a girls' marriage. The thought prevailed that girls must marry at an early age, else they would never get husbands, and that would be a calamity! Wives and daughters among distinguished people were not seen in public places. Husbands might be Cambridge graduates or be carrying degrees from Indian universities, and their wives be unable to read." In 1894 Miss Day left India "for the usual furlough, fully convinced that doors for Indian womanhood were being opened through education and they would never close. A better day was coming when child marriage and the sad-plight of Indian child-widows would be no more."

Dec Miss b10

2/2/32

Reverend and Mrs. David G. Abbott

Khandwa, India.

The Reverend David G. Abbott, a native of California, was graduated from Iowa Wesleyan University in 1892 and from Boston University School of Theology in 1895. In the latter year he was admitted on trial in Iowa Conference, ~~in which he worked until leaving for India in the Fall of 1900.~~ Mr. Abbott dates his interest in foreign missions previous to his conversion, which occurred in August 1886. When he became a student in Iowa Wesleyan he joined the Student Volunteer Band and from that time looked forward to entering the mission field.

In September 1895 Mr. Abbott was married to Miss Martha E. Day, who had already spent five years in India as a missionary of the Woman's Foreign Missionary Society.

Mr. Abbott was transferred to Bombay Conference in December 1900, and appointed in charge of the work at Khandwa, Central Provinces District.

In January 1905 the Central Provinces Mission Conference was organized, which, in 1913 became an Annual Conference. Mr. Abbott is a charter member of the Conference and has been Superintendent of various Districts. In these days Nationals are taking over many of the burdens previously borne by the missionary. The Reverend Salabat Philip is Superintendent of the Khandwa District, and Mr. Abbott is District Missionary.

Mr. Abbott is also Manager and Principal of the Khandwa Boys' School which has an enrollment of 137. Mrs. Abbott has charge of the Hostel which cares for 82 boys. Eight boys from the Khandwa School are in the High School at Jubbulpore.

The Methodist Episcopal Church is the only Church having mission work in Khandwa. Mr. and Mrs. Abbott are the only missionaries of the Board of Foreign Missions, ~~but there are~~ three ladies of the Woman's Foreign Missionary Society at Khandwa; the Misses Lydia S. Pool, Dorcan Hall and Ethel Ruggles. Miss Ruggles is caring for the Primary Schools of the boys as well as the girls. The Woman's Foreign Missionary Society have a Normal School and a Girls' School at Khandwa.

In addition to the missionaries there are four preachers members of Conference; four ordained local preachers; twenty unordained local preachers; four exhorters, and six other workers, and thirty-seven women workers.

There are altogether 2896 Christians in the Khandwa District.

The District is divided into ten Circuits. Each Circuit includes from ten to twenty villages. The Church at Khandwa, the center of the District, is self-supporting. Another Circuit centers around Burhanpur. The Burhanpur Church pays half the salary of its pastor. A colporteur and a local preacher are stationed at Shahpur. At the last annual report 18 New Testaments and 1160 portions of the Bible were sold on the circuit.

There is also a Dispensary in Burhanpur with two nurses and three bible woman. There are 120 Christians on the circuit.

In connection with the School at Khandwa a new cottage was erected in 1930. It is used as an honor cottage. The ten orphans securing the highest grades and with good conduct are allowed to occupy it for a month. This plan has developed some wholesome rivalry.

Mr. and Mrs. Abbott have rendered through the years a service marked by deep devotion to the people with whom they have labored and the Church adopting them as its missionaries will find deep satisfaction in the thought that they are helping to make possible the work they are doing on the Khandwa District of the Central Provinces Conference.

Mr. and Mrs. Abbott were home on furlough 1929 to 1930. The usual term of service in India is seven years, therefore if their lives are spared the Church now taking over the support of Mr. and Mrs. Abbott will have the privilege of caring for them and hearing from them during a period of several years duration.

Photographs from this
file have not been
included but are
available upon request.
For more information
please contact
research@gcah.org