sideration that a rule of procedure should not be taken to repeal a rule of substantive law unless the intention to do so was clearly expressed or must necessarily be implied. The Full Bench of the High Court at Bombay consider that such intention must necessarily be implied from the course of legislation. If the latest modification of the Code of Civil Procedure is any indication of the intention of the Legislature, it lends support to the view taken by the Full Bench of this Court. However this may be, the decision in *Mullamma* v. *Venkappa* is binding upon us as observed in second appeal No. 278 of 1887 until it is set aside by a Full Bench. Though the decision in *Thirumalai* v. *Sundara*(1) seems to follow the Bombay decision, it distinguishes that case from case of *Mallamma* v. *Venkappa*. Again, the creditor may certify the adjustment whenever he likes, and the new contract is not therefore void *ab initio*. We can only refuse to enforce it on the ground that the consideration had failed at the date of this suit, but we are unable to say so in the case before us as the creditor had allowed the decree to become barred by limitation relying on the mortgage. Following the decision of the Full Bench of this Court, we set aside the decree of District Judge and restore that of the District Munsif and direct the respondent to pay the appellant's costs both in this Court and in the Lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

IBRAHIM (PLAINTIFF), APPELLANT,

and

SYED BIBI (DEFENDANT), RESPONDENT.*

1888. April 13. October 4.

Muhammadan law—Divorce.

Under Muhammadan law no special expressions are necessary to constitute a valid divorce, nor, except when the repudiation is final, need the words be repeated thrice. If the divorce pronounced is liable to be, but is *not*, revoked within the period of iddut, it becomes final.

APPEAL from the decree of G. D. Irvine, District Judge of

(1) I.L.R., 11 Mad., 469. * Second Appeal No. 759 of 1887.

IBRAHIM v. SYED BIBI.

Trichinopoly, reversing the decree of A. Kuppusami Ayyar, District Munsif of Trichinopoly, in suit No. 104 of 1886.

The plaintiff sued to recover his wife Syed Bibi, defendant No. 1, from Syed Ali Peran Sahib, defendant No. 2.

In the plaint it was alleged that defendant No. 1 had left plaintiff and was kept concealed by defendant No. 2. Defendant No. 1 pleaded that the marriage tie which existed between her and plaintiff was broken by plaintiff uttering the word "talak" two years ago. She denied that she was with defendant No. 2. Defendant No. 2 was discharged at plaintiff's request, and the only issue was whether defendant No. 1 was divorced as alleged.

The Munsif decreed that defendant No. 1, the subject of the suit, shall be taken possession of by plaintiff.

On appeal the District Judge accepted the evidence as to divorce and dismissed the suit without deciding an objection taken on appeal that the words used did not amount to a divorce.

Plaintiff appealed.

Sadagopacharyar and *S. Subramanya Ayyar* for appellant.

Narayana Rau for respondent.

The Court (Muttusami Ayyar and Parker, JJ.) delivered the following

JUDGMENT:—The appellant and the respondent are Muhammadans, the former being the husband of the latter, and it is found by the Court below that the appellant divorced the respondent by uttering the word "talak." Our attention is called to the evidence showing that the words used by the appellant were "as you give the income to another, I do not wish that you should continue to be my wife." It is urged in appeal that there is no distinct finding that the expression used was sufficient in law to constitute a divorce, that it was repeated three times after the intervention of one month between each time, and that the divorce was not reversed within the period of probation allowed. On the other hand, it is contended for the respondent that no special words are necessary, that they need not be repeated thrice, and that if there is an intention to divorce and it is manifested by apt words and if the divorce pronounced is not reversed within the period of iddut, it becomes irreversible. Reliance is also placed on *Hamid Ali* v. *Imtiazan*(1). Before disposing of this second appeal we con-

(1) I.L.R., 2 All., 71.

sider it necessary to ask the Judge to try the following issues and to remit findings thereon :—

(1) Whether any and what special expressions are necessary under Muhammadan law to constitute a valid divorce ?

(2) Whether it is necessary to repeat them thrice, and, if so, subject to what conditions ?

(3) Whether the divorce pronounced in this case was reversed by the husband within the period of iddut ?

In compliance with the above order the District Judge submitted the following

FINDING—*First issue.*—Whether any and what special expressions are necessary under Muhammadan law to constitute a valid divorce.

No such special expressions are required.

Reasons therefor.—No such special expressions are declared necessary in Baillie's Muhammadan Law or Macnaghten's Principles and Precedents, to both of which I have referred, the former (Book III, Chapter II, Section 5) gives an immense number of ambiguous expressions, the effect of which generally depends on intention as stated by the husband or shown by his action in contentedly living separate or otherwise. I can find no decided cases which speak of special expressions as necessary. *Hamid Ali* v. *Imtiazan* cited by defendant throws no light on the matter. The only other case mentioned in the digest is *Furzund Hossein* v. *Janu Bibee*(1) which seems merely to determine that the words must be uttered to the wife, not to other persons. Anger makes no difference, except as giving more weight to the husband's subsequent denial of intention.

Second issue.—' Whether it is necessary to repeat them thrice, and, if so, subject to what conditions.'

FINDING.—The words of repudiation must be repeated three times, but not necessarily the same words on each occasion, and the three occasions may be continuous. The husband may repudiate three times and therefore irrevocably in one sentence without pause.

Reasons therefor.—I rely on *Abdul Ali Ishmailji, in re*(2). Also on Baillie's Mahammadan Law, Book III, Chapter I and Chapter II, Sections 1, 3 and 5. Macnaghten, Chapter VII,

(1) I.L.R., 4 Cal., 588. (2) I.L.R., 7 Bom., 180.

IBRAHIM v. SYED BIBI.

Section 24, says that there must be an interval of a month between each repudiation.

Third issue.—'Whether the divorce pronounced in this case was reversed by the husband within period of iddut.'

FINDING.—There is no proof that it was so reversed.

Reasons therefor.—There is no evidence on record as to any formal reversal. It might be inferred from plaintiff's action in sending to call her back from her father's house after she left him, and in subsequently filing a criminal complaint, if he did so within the period of iddut. The only date given in the original record is that of defendant's departure from plaintiff's house at Trichinopoly, 21st May 1884. The date of the complaint is 27th May 1884 as ascertained from the record of calendar No. 237 of 1884 on the file of the Town Second-class Magistrate of Trichinopoly. Defendant in her written statement gives no place and no date, speaking vaguely of "two years ago." The evidence of her witnesses is equally vague as to date. In a deposition taken by this Court since the remand and herewith enclosed, she says that the talak was pronounced in her own house at Talanji, where she lived always from the date of her marriage. She never lived in her husband's house. He lived in hers. She still avoids giving any exact date, but says that the complaint was filed five or six months after the divorce which was pronounced 4 years and half ago. The parties, as often happens, seem to be each possessed with the one idea of contradicting absolutely everything asserted by the other, without the slightest regard to truth or falsehood or probability. As plaintiff does not assert a revocation, and as the interval between the alleged divorce and the visit for recall, which immediately preceded the criminal complaint of May 27th, 1884, is very uncertain, I find that there is no proof that the husband reversed the divorce within the period of iddut.

On the 4th October the Court delivered the following

JUDGMENT:—We agree with the Judge that no special expressions are necessary under Muhammadan law to constitute a valid divorce. It is sufficient if they clearly indicated an intention to put an end to the relation of husband and wife; nor do we consider that the expressions should be repeated thrice except when the repudiation is final and irrevocable. If the divorce pronounced is liable to be reversed, as in the case before us, and if it is not

reversed within the period of iddut, it becomes thereafter irrevocable. The same view was taken by the High Court of Allahabad in *Hamid Ali* v. *Imtiazan*. It is then urged that the District Judge refused to accept fresh evidence tendered by the appellant to prove that the divorce had been reversed, but there is no affidavit to that effect. Nor does the record support the statement. On the other hand, we observe that the Judge took some new evidence after the issues had been remitted to him.

We accept the findings and dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Wilkinson.

VENKAMMA (DEFENDANT), APPELLANT,

and

SAVITRAMMA (PLAINTIFF), RESPONDENT.*

1888. August 6. October 23.

Parent and child—Interference with natural rights for the benefit of the child—Equity and good conscience.

Plaintiff, a Brahman widow, sued to recover her illegitimate infant child from defendant, to whom she had entrusted it since its birth for nurture:

Held, that it being proved that the plaintiff was leading an immoral life, the suit was rightly dismissed.

APPEAL from the decree of A. L. Lister, District Judge of Godavari, reversing the decree of G. Jaganadha Rau, District Munsif of Amalapur, in suit No. 240 of 1886.

The facts appear sufficiently for the purpose of this report from the judgment of the Court (Kernan and Wilkinson, JJ.).

Subha Rau for appellant.

Venkataramayya Chetti for respondent.

JUDGMENT.—The plaintiff's claim to the possession of the female infant, as stated in the plaint, is that the mother of the child died leaving her with the plaintiff's mother, who, before her death, gave the custody of the child to the plaintiff. The plaintiff gave to the defendant the child, then only one month or so old. The plaintiff alleges that the child was entrusted to the defendant

* Second Appeal No. 1255 of 1887.