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latter did not become owner of the property until after he had obtained a decree for foreclosure, and until the right of redemption in the vendor had been extinguished. On the 5th of May, 1884, the mortgagee obtained possession, and under Art. 10 the plaintiff would have a year from that date to bring his suit. We do not see why Art. 10 should not govern it, for the sale became absolute by the foreclosure proceedings, and possession was subsequently obtained.

On the other hand, if Art. 120 applies, we think that plaintiff's right to sue accrued upon the expiry of the six months grace allowed to the mortgagor after the decree for foreclosure, and there would be six years allowed from that time.

Thus we come to the conclusion that the plaintiff was entitled to succeed in his suit, and that the appeal fails on each point.

It was also contended that, at any rate, the defendants are entitled to interest upon Rs. 399, the amount covered by the two deeds of *bai-bil-wufa*. We think that that contention must prevail, and it was admitted by Baboo Mohesh Chunder Chowdhry for the respondent to be a good one.

The decree of the lower Appellate Court, therefore, will be modified to the extent of directing interest to be paid upon the Rs. 399, at the rate of six per cent. per annum from the date of foreclosure till possession.

The appeal is dismissed with costs.

H. T. H. *Appeal dismissed.*

Before Mr. Justice Tottenham and Mr. Justice Norris.

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July 2.

DHAPI (DEFENDANT) *v.* RAM PERSHAD, MINOR, REPRESENTED BY HIS UNCLE AND GUARDIAN AD LITEM DUNGUR MULL (PLAINTIFF).*

Practice—Production of Documents—Discovery—Revision of interlocutory order when appeal lies from final decree—Civil Procedure Code (Act XIV of 1882), *ss.* 131—136 *and* 622.

If a notice under s. 131 of the Civil Procedure Code be not answered as provided by s. 132, the party seeking the inspection of documents may apply for an order under s. 133, and his application must be supported by an affidavit. The Court has no jurisdiction to pass an order under s. 136 unless the provisions of s. 134 are strictly complied with.

* Civil Rule No. 794 of 1887 made against the order of Baboo Upendro Chunder Mullick, Subordinate Judge of Monghyr, dated the 13th of May, 1887.

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There is nothing in s. 622 of the Code which prevents the High Court from setting aside an interlocutory order if made without jurisdiction.

The word "case" in that section is wide enough to include such an order, and the words "records of any case" include so much of the proceedings in any suit as relate to an interlocutory order. *Omrao Mirza* v. *Jones* (1); *Harsaran Singh* v. *Muhammad Raza* (2); *Chattar Singh* v. *Lekhraj Singh* (3); *Farid Ahmad* v. *Dulari Bibi* (4), dissented from.

THE facts of the case were as follows: One Mool Chand Ram died many years ago, leaving two sons, Mohun Ram and Lutchmun Dass. The two brothers remained joint for some time after their father's death, but subsequently separated. Lutchmun Dass married three wives successively; by his first wife, Mussamut Bindoo, he had a son, Chundi Pershad, born 2nd Assin 1905 Sumbut (15th September 1848); by his second wife, Mussamut Junga, he had a son, Dungur Mull, born 29th Magh 1918 Sumbut (14th February 1862); by his third wife, Mussamut Dhapi, he had no male issue, only a daughter. Mohun Ram died in Aughran 1927 Sumbut (November 1870), without issue, male or female, but having adopted his nephew (brother's son) Dungur Mull, who, on Mohun Ram's death, entered into the possession of his property. Lutchmun Dass died in Assin 1927 Sumbut (September 1870), and on his death his son Chundi Pershad entered into possession of his property. Chundi Pershad married Mussamut Parbati and died 9th Pous 1934 Sumbut (28th December 1877). Before his death, *viz.*, on 17th August, 1877, he made a will, whereof he appointed his wife Mussamut Parbati and his step-mother Mussamut Dhapi executrixes; and by this will he gave Mussamut Parbati authority to adopt a son. On 2nd Aughran 1935 Sumbut (12th November 1878), a son Ram Pershad was born to Dungur Mull, and this boy was adopted by Mussamut Parbati on 16th Aughran 1935 (25th November 1878). Mussamut Parbati died on 22nd Magh 1293 Fusli (11th February 1886), and after her death Chundi Pershad's property came into the hands of Mussamut Dhapi, who subsequently denied Ram Pershad's adoption. Dungur Mull on 28th January, 1887, executed a deed of disclaimer of any interest he might have in the property of

(1) 12 C. L. R., 148.
(2) I. L. R., 4 All., 91.
(3) I. L. R., 5 All., 293.
(4) I. L. R., 6 All., 233.

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Chundi Pershad in favor of Ram Pershad. Ram Pershad claiming to be entitled to Chundi Pershad's property, either as the adopted son of Mussamut Parbati or under the deed of disclaimer, brought a suit on 1st February, 1887, against Mussamut Dhapi to obtain possession of Chundi Pershad's estate, which he valued at Rs. 3,36,795. He did not ask for an account. The suit purported to be brought by "Baboo Ram Pershad, minor, adopted son of Baboo Chundi Pershad Marwari, deceased, under the guardianship of Baboo Dungur Mull, the uncle and next friend of the minor." No certificate under Act XL of 1858 was produced at the time of filing the plaint, nor was any order recorded at that time permitting Dungur Mull to file the plaint on behalf of Ram Pershad. On 8th February the following order was made by the Subordinate Judge: "Through the oversight and carelessness of the Amla my order for granting this plaintiff, upon his application supported by affidavit" (leave ?), "to sue as a next friend of the minor, he being the natural father of the minor, and uncle on the other side, was not recorded on the day; but as the law on the subject is not very clear, I think it may be recorded now, subject to a further discussion during the trial." The 4th March was fixed for the appearance of the defendant and for settlement of issues. On the 5th February the plaintiff, under s. 131 of the Civil Procedure Code, gave notice through the Court to the defendant to produce for inspection certain account books for the Sumbut years 1933 to 1943 (1876—1887). The notice was served on 10th February. On 7th February defendant applied for a transfer of the suit to the file of the District Judge of Bhagulpore, who, on that day, directed a notice to issue calling on the plaintiffs to show cause on 25th February why the suit should not be transferred, and stayed all proceedings in the meantime. Defendant's application for transfer was refused on 3rd March. On 4th March the settlement of issues was postponed to 21st April. On 8th March plaintiff applied under s. 133 for an order for inspection of the books, on the ground that the defendant, having been served on 10th February with notice under s. 131 of the Civil Procedure Code, had omitted to give notice under s. 132 of the Civil Procedure Code. That application was directed to be heard

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on 15th March. On 16th March the defendant put in a petition, alleging that the books were required for the preparation of the written statement, and asking that she might be permitted not to produce them for inspection until the day fixed for the settlement of issues. On 16th March an order was made on the defendant's application, granting her ten days further time to put in the documents.

On 25th March the defendant put in a petition in which she claimed under s. 135 of the Civil Procedure Code to withhold inspection of the books until the plaintiff established his adoption, or his right, under the deed of relinquishment. On the same day the plaintiff put in a petition alleging that the defendant had not produced the books for inspection, and asking that the procedure, under s. 136 of the Civil Procedure Code, should be followed, and the suit decided *ex parte*. Defendant's written statement was filed on 25th April. She denied that Ram Pershad was adopted by Mussamut Parbati; she contended that, if as a matter of fact he was adopted, the adoption was invalid; she denied Dungur Mull's title; she claimed to be entitled to Chundi Pershad's property under his will, and she contended that the suit could not proceed until a certificate had been granted under Act XL of 1858.

On 6th May issues were settled, eleven in number. The first was "whether the plaintiff is entitled to maintain this suit without a certificate under Act XL of 1858;" the second was "whether Dungur Mull acquired any right to the estate of Chundi Pershad, and whether plaintiff is entitled to any such right by virtue of assignment, as alleged in the plaint, by Dungur Mull;" the fifth was "whether Mussamut Parbati adopted plaintiff as an adopted son of Chundi Pershad according to the provisions of the Hindu law in force in this part of the country? Has it been a valid adoption"? No order was made on the petitions of 25th March until 13th May, when the following order was made:—

"As regards the question of inspection of certain documents, under s. 131 of the Civil Procedure Code, it appears that the plaintiff applied for and obtained an order under the said section of the law quoted on the 5th February, 1887, and the defendant did not

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comply with the provisions of s. 132 of the Civil Procedure Code, within the fixed time, *viz.*, ten days or even on or before the 13th March last. On the 16th March the defendant, without complying with the request of the plaintiff, simply applied for an adjournment of the hearing without sufficient legal excuse; her right, therefore, under s. 135 of the Civil Procedure Code was lost. It has been argued by the plaintiff's pleader that the books of accounts, the inspection whereof has been applied for by him, would afford materials for the purpose of proving the adoption, and also the last issue raised in the case. I think defendant has failed to make out a good and sufficient cause or excuse for non-compliance with the plaintiff's request. These books of accounts are not title deeds or such documents as that their production would expose and injure the defendant, hence it cannot be held that she has good ground for withholding their production, or appointing a place convenient to her, for the purpose of inspection.

"I accordingly reject the defendant's application of objection, and she must abide by the consequences of the law. At the suggestion of the plaintiff's pleader I grant defendant ten days time more to comply with the plaintiff's request of inspection."

On the 21st May Mr. *Woodroffe* obtained this rule calling upon Baboo Ram Pershad to show cause why the last mentioned order of the Sub-Judge of Monghyr should not be set aside under s. 622 of the Code of Civil Procedure.

The rule now came on to be heard on the 17th June, 1887.

Mr. *Evans* (Mr. *Ameer Ali* and Baboo *Bolye Chand Dutt* with him) showed cause.—The Sub-Judge had jurisdiction to pass the order, and the order was properly made—*Saull* v. *Browne* (1); *Saunders* v. *Jones* (2); *Attorney General* v. *Gaskill* (3). The plaintiff is entitled to inspect the *khatas* which are in the possession of the defendant.

The order of the 13th May, 1887, is an interlocutory order, and there is an appeal from the final decree with which the High Court cannot interfere under s. 622 of the Civil Procedure Code—

(1) L. R., 9 Ch. App., 364. (2) 7 Ch. D., 435.
(3) 20 Ch. D., 519.

Amir Hassan Khan v. *Sheo Bakhsh Singh* (1); *Sheo Bux Bogla* v. *Shib Chunder Sen* (2); *Badami Koer* v. *Dina Rai* (3); *Omrao Mirza* v. *Jones* (4); *Harsaran Singh* v. *Muhammad Raza* (5); *Chattar Singh* v. *Lekhraj Sing* (6); *Farid Ahmad* v. *Dulari Bibi* (7).

The *Advocate-General* (Mr. *G. C. Paul*, with him Mr. *Woodroffe* and Baboo *Jogesh Chunder Roy*) in support of the rule.—The plaintiff is not entitled to inspect the documents unless he proves the adoption, and that he is a reversioner. The Sub-Judge had no jurisdiction to pass the order under s. 136. All applications under s. 134 for inspection of documents must specify the documents, and the Court under s. 135 is bound to decide whether the party applying for inspection is entitled to do so. Here there is no affidavit to show that the account-books contain any items of expenses of adoption—*Attorney General* v. *Thompson* (8); *Rowcliffe* v. *Leigh* (9).

Section 622 of the Code does not take away the power of the High Court to set aside an interlocutory order if made without jurisdiction.

The following judgments were delivered by the Court (TOTTENHAM and NORRIS, JJ).

NORRIS J. (after setting out the facts as above) proceeded:—

On 21st May, upon the application of Mr. Woodroffe, we granted a rule calling upon the plaintiff to show cause why the order of 13th May should not be set aside. The rule was argued on 17th ultimo, Mr. Evans showing cause and Mr. Advocate-General supporting it.

Any difficulty that exists in disposing of this rule arises from the fact that neither the Subordinate Judge nor the pleaders of the respective parties seem to have understood the procedure regarding inspection.

Chapter X of the Civil Procedure Code contains the provisions

(1) L. R. 11 I. A., 237; I. L. R., 11 Calc., 6.
(2) I. L. R., 13 Calc., 225.
(3) I. L. R., 8 All., 111.
(4) 12 C. L. R., 148.
(5) I. L. R., 4 All., 91.
(6) I. L. R., 5 All., 243.
(7) I. L. R., 6 All., 233.
(8) 8 Hare, 106 and 115.
(9) 6 Ch. D., 256.

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with regard to "discovery, and the admission, inspection, production, impounding and return of documents."

Section 121 of the Civil Procedure Code authorises a plaintiff, at any time by leave of the Court, to deliver through the Court interrogatories in writing for the examination of the defendant, and authorises a defendant, at any time after his written statement has been tendered, received, and placed on the record, to deliver through the Court interrogatories in writing for the examination of the plaintiff. Section 122 prescribes the method of service of interrogatories. Section 125 authorises any party interrogated "to refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bonâ fide* for the purposes of the suit, or that the matter enquired after is not sufficiently material at that stage of the suit or on any other like ground." Under s. 127, "if any person interrogated omits or refuses to answer or answers insufficiently any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer or to answer further as the case may be." The penalty upon a plaintiff for not obeying an order served upon him "to answer or to answer further, as the case may be," is that he is liable to have his suit dismissed for want of prosecution and to be prosecuted for an offence under s. 188 of the Penal Code; the penalty upon a defendant for not obeying an order, served upon him "to answer or to answer further, as the case may be," is that he is liable to have his defence struck out and to be placed in the same position as if he had not appeared and answered, and to be prosecuted for an offence under s. 188 of the Penal Code. An order of the Court is necessary before the plaintiff's suit can be dismissed, or the defendant's defence struck out.

Up to this point the Chapter has dealt with the first branch of discovery, that by interrogatories. It then proceeds to deal with discovery as it affects documents.

The question of discovery as it affects documents obviously embraces two heads: first, discovery simply, that is to say, the power of compelling your opponent to disclose what documents he has in his possession; secondly, the power of compelling their production. The subject of discovery simply

is dealt with by s. 129, which says that "the Court may at any time during the pendency therein of any suit order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may at any time before the first hearing apply to the Court for a like order." If the party served with the order objects to produce any of the documents disclosed in his affidavit, he must specify them, together with the grounds of his objection. The penalties for non-compliance with an order under s. 129 are the same as those provided by s. 136 for non-compliance with an order under section 127 to answer interrogatories.

Section 130, which says that "the Court may at any time during the pendency therein of any suit order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just," deals as well with the power of compelling your opponent to disclose what documents he has in his possession, as with the power of compelling their production. The penalty for non-compliance with an order under s. 130 is the same as that provided by s. 136 for non-compliance with an order under s. 127 or s. 129. The Chapter then proceeds to deal with the voluntary inspection of documents. Section 131 enacts "that any party to a suit may at any time before or at the hearing thereof give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice, or of his pleader, and to permit such party or pleader to take copies thereof."

Section 132 provides that "the party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time, within three days from such delivery, at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office, or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds." The notice to be given through the

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Court under s. 131 should require the party from whom inspection is sought to deliver the notice under s. 132 within ten days from the receipt of the notice, and under s. 131 the time cannot be curtailed. The penalty for not delivering through the Court the notice required by s. 132 is that the party not so giving it shall not afterwards "be at liberty to put in any such document in evidence unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause."

The Chapter next proceeds to deal with inspection by order of the Court.

Section 133 enacts that, "if any party served with notice under s. 131 omits to give notice under s. 132 of the time of inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection."

Section 134 provides that, "except in the case of documents referred to in the plaint, written statement or affidavit of the party against whom the application is made or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing (*a*) of what documents inspection is sought, (*b*) that the party applying is entitled to inspect them, and (*c*) that they are in the possession or power of the party against whom the application is made." Section 135 provides that, "if the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first and reserve the question as to the discovery or inspection." That the provisions of this section were not intended to come into operation until after an application has been made under s. 133 is plain from a consideration of the fact that s. 136 enacts the same penalties for non-compliance with an order under s. 133 as for non-compliance with orders under ss. 127, 129 and 130, and no order could be made

under s. 133 until the questions raised under s. 135 had been determined. If this view of the Chapter be correct, it follows that almost all the proceedings in this case are irregular.

In the first place the plaintiff's application of the 8th March was premature, for the notice under s. 131 was served on the defendant on 10th February, three days after all proceedings in the suit were stayed. The application for transfer was refused on 3rd March, and it was not till then that the ten days' time within which to deliver the notice under s. 132 began to run against the defendant. The application was also bad, for it was not supported by an affidavit as required by s. 134.

In the second place the defendant's application of 16th March was unnecessary. If she did not want to produce the books for inspection, all she had to do was to refrain from delivering the notice under s. 132 and wait for the plaintiff to apply for an order under s. 133, supported by an affidavit under s. 134.

In the third place the defendant's application of 25th March was premature, for there had been no proper application for an order under s. 133.

In the fourth place the plaintiff's application of 25th March was irregular, for no order for inspection had been made on the defendant under s. 133.

In the fifth place the order of the Judge of 13th May, purporting to be made under s. 136, is bad, being made without jurisdiction.

The present position of the parties is this: If the defendant does not wish to give inspection of the books she need not do so at present, and the only penalty she will be subject to is that she will not be allowed, at the trial, to put in the books on her own behalf unless she satisfies the Court that they relate only to her own title, or that she had some other and sufficient cause for not complying with the notice served upon her on 10th February. If the plaintiff still wants to have inspection of the books he may apply for an order for inspection under s. 133 founded upon an affidavit under s. 134. The defendant may then claim the benefit of the provisions of s. 135. If she does, the Subordinate Judge will then have "to satisfy himself whether the right to such discovery or inspection as the plaintiff seeks

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depends upon the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to inspection;" if he is so satisfied, he ought to order the issue or issues, question or questions, to be determined first and reserve the question as to inspection. In this view of the case it is unnecessary and undesirable to discuss the cases cited to us bearing upon the question of plaintiff's right to inspection under the circumstances of this case.

Only one more point remains to be considered. Mr. Evans contended that, as the order of 13th May was an interlocutory order, and there was an appeal from the final decree, we could not interfere under s. 622 of the Civil Procedure Code. In support of the contention the learned Counsel referred to the cases cited at page 573 of the second edition of Mr. Justice O'Kinealy's Code of Civil Procedure in the learned author's notes to s. 622 of the Civil Procedure Code; to *Amir Hassan Khan* v. *Sheo Baksh Sing* (1), *Sew Bux Bogla* v. *Shib Chunder Sen* (2) and *Badami Kuar* v. *Dinu Rai* (3). In the case of *Omrao Mirza* v. *Jones* (4), one of the cases cited by O'Kinealy, J., the facts were these: The plaintiff brought a suit, alleging divers breaches of trust, asking for an account and for the appointment of a new trustee. The value of the trust property was five lacs of rupees. The suit was instituted on a ten-rupee Court-fee stamp as being the proper stamp under Art. 17, Sch. II of the Court Fees Act. The Court in which the suit was instituted was of opinion that the Court-fee ought to have been calculated on the full value of the trust property, and made an order that the deficiency, Rs. 2,990, should be made good within a certain time. Before the time expired the plaintiff applied for a rule to show cause why the order should not be set aside. In showing cause against the rule it was argued that, if the plaintiff had waited until the expiration of the time allowed for making good the deficiency, the Court of first instance must have proceeded to deal with the case

(1) L. R., 11 I. A., 237; I. L. R., 11 Calc., 6.
(2) I. L. R., 13 Calc., 225.
(3) I. L. R., 8 All., 111.
(4) 12 C. L. R., 148.

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under s. 54 of the Civil Procedure Code, and that the order rejecting the plaint which would have been made in due course under that section, on the ground that the relief was not properly valued, would have been an appealable order; and this being so, it was further contended that the applicant ought not to be allowed to come in under s. 622 of the Civil Procedure Code, when he could by law have an appeal in the case upon the very point he sought to raise under the rule. McDonell and Field, JJ., yielded to this argument; and holding that the case was not, with reference to the language of s. 622 of the Civil Procedure Code "a case in which no appeal lies to the High Court," and that the matter under dispute ought to be determined on appeal, discharged the rule.

In *Harsuran Singh* v. *Muhammad Raza* (1), another of the cases cited by O'Kinealy, J., the plaintiff applied by his pleader to a District Judge for leave to appeal as a pauper against a decree of a Subordinate Judge; the District Judge refused the application on the ground that it ought to have been made personally and not by a pleader. The plaintiff applied to the High Court to revise the District Judge's order under s. 622 of the Civil Procedure Code. Straight, J., in giving the judgment of the Court said: "We are clearly of opinion that this application was inadmissible and cannot be entertained. Section 622 of the Civil Procedure Code does not, in our judgment, apply to a proceeding of so purely an interlocutory character as that mentioned in s. 592."

In *Chattur Singh* v. *Lekhraj Singh* (2), another of the cases cited by O'Kinealy, J., the facts were these: "There had been a reference to arbitration under the provisions contained in Chapter XXXVII of the Civil Procedure Code; the arbitrator had made his award in favor of the defendant; the award was set aside upon the application of the plaintiff on the ground of the arbitrator's misconduct. The defendant impugned the propriety of the decision of the Court of first instance that the arbitrator had been guilty of misconduct," and applied to the High Court to revise the order under s. 622 of the Civil Procedure Code. Oldfield, J., in giving judgment, said at

(1) I. L. R., 4 All., 91. (2) I. L. R., 5 All., 293.

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page 294: "We are of opinion that we have no power of revision under s. 622. The contention that the proceeding for arbitration is a decided case in which no appeal lies within the meaning of the section, and therefore open to revision under s. 622, is not tenable. The proceeding is of an interlocutory character only, made in the course of a suit; it is part of a case which is still undecided, and in which an appeal lies from the final decree. It was not the intention to allow of revision of interlocutory proceedings, in the course of a suit, which do not determine it. The order, which is the subject of this application, will be open to revision by appeal from the final decree in the suit, and even if s. 622 allowed of it, it would be highly inexpedient for us to interfere at this stage of the case."

In *Furid Ahmad* v. *Dulari Bibi* (1), the last of the cases cited by O'Kinealy, J., a District Judge had transferred to his own file a suit pending in the Court of an Additional Subordinate Judge under s. 24 of the Civil Procedure Code without notice to the defendants and when the trial of the suit was nearly completed. The defendants moved the High Court under s. 622 of the Civil Procedure Code to revise the order of transfer. The application was refused, the Court holding that the order of transfer was not one which they could revise under s. 622 of the Civil Procedure Code, as it was an order made in a suit, and there was an appeal in the case from the final decree.

These cases no doubt decide in so many words that s. 622 of the Civil Procedure Code does not apply to interlocutory orders when there is an appeal from the final decree. I confess that, after a careful consideration of the judgments, I am unable to concur in the interpretation placed on s. 622 of the Civil Procedure Code. I think that the word "case" in s. 622 of the Civil Procedure Code is wide enough to include an interlocutory order, and that the words "record of any case" include so much of the proceedings in any suit as relate to the interlocutory order. It is easy to imagine cases where irremediable injury may be done to a party by an interlocutory order made without jurisdiction, and unless the words of the section are clear beyond all doubt to the contrary, I cannot believe that the Legislature intended such injury to remain without a remedy.

(1) I. L. R., 6 All., 233.

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The other cases cited by Mr. Evans do not, as far as I can see, throw any light upon the subject. I am of opinion that the rule should be made absolute with costs.

TOTTENHAM, J.—Under the circumstances I concur in making this rule absolute, but I think that, even if we entertained doubt as to the power of this Court to interfere under s. 622 of the Civil Procedure Code, it would be our duty to express such an opinion upon the manifest irregularities set out in Mr. Justice Norris's judgment as would induce the Court below of its own accord to desist from enforcing the order against which the rule has been obtained.

The rule will be made absolute with costs.

Rule made absolute.

H. T. H.

APPEAL FROM ORIGINAL CIVIL.

Before Mr. Justice Prinsep, Mr. Justice Wilson and Mr. Justice Norris.

NOBIN CHUNDER BANNERJEE (PLAINTIFF) *v.* ROMESH CHUNDER GHOSE AND OTHERS (DEFENDANTS).*

1887 *March* 31.

Hindu law, Contract—Interest recoverable at any one time, Amount of—Dámdupat, Rule of—Act XXVIII of 1855*—High Court, Ordinary Original Civil Jurisdiction.*

The rule of Hindu law, known in Bombay as the rule of *Dámdupat*, that no greater arrear of interest can be recovered *at any one time* than what will amount to the principal sum, is neither a mere moral precept nor limited in its application to other than stipulated interest, and as a part of the Hindu law of contract is, in the absence of any legislative enactment to the contrary, the law as between Hindus in the High Court in its Ordinary Original Civil Jurisdiction.

Act XXVIII of 1855 deals exclusively with the rate of interest which may be allowed, and there is nothing in that Act inconsistent with the rule of *Dámdupat*.

Nathubhai Panachand v. *Mulchand Hirachand* (1) distinguished.

NOBIN CHUNDER BANNERJEE as purchaser under a deed of sale, dated the 2nd day of July, 1883, brought a suit for possession of an undivided third part or share of a house and premises,

* Original Civil Appeal No. 26 of 1886, against the judgment of Mr. Justice Trevelyan, dated the 21st of July, 1886.

(1) 5 Bom. A. C., 196.