she had no just cause of complaint against her husband; and unless and until that decision is reversed, it is impossible to hold that a Mussalmán wife defying her husband, refusing to live with him and bringing scandalous charges against him, can yet claim to be maintained separately at the expense of her husband. I think the rule must be discharged with costs as against the plaintiff's property.

1896,

A. v. B.

Attorneys for the appellant:—Messrs. *Ardesir, Hormusji and Dinsha.*

Attorneys for the respondent:—Messrs. *Payne, Gilbert and Sayáni.*

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

ALI SA'HEB (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHA'BJI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1895. *September* 23.

Dámdupat—Mortgage—Original mortgagor a Hindu—Mortgage to a Mahomedan—Hindu mortgagor's interest subsequently purchased by a Mahomedan—Suit by Mahomedan purchaser for redemption—Rule of dámdupat how far applicable.

A Hindu mortgaged his property in 1843 to a Mahomedan for Rs. 150 with interest at 12 per cent. per annum. On 5th April, 1880, the Hindu mortgagor's interest was sold to the plaintiff, who was a Mahomedan. In March, 1893, the plaintiff sued for redemption, both parties to the suit being Mahomedans.

Held, that as long as the mortgagor was a Hindu (*i.e.* until 1880) the rule of *dámdupat* applied, and that as soon as the interest doubled the principal, further interest stopped. The sum of Rs. 300 was, therefore, the full amount of debt for which the land could be charged and liable in the hands of a Hindu debtor. But on the 5th April, 1880, the plaintiff (a Mahomedan) became the debtor. The rule of *dámdupat* then no longer applied; the stop was removed and interest again began to run. The decree, therefore, ordered the plaintiff to redeem on payment of Rs. 300 (*i.e.* double the principal Rs. 150) with further interest at Rs. 12 per annum from the date of his purchase (5th April, 1880) until payment.

SECOND appeal from the decision of C. E. G. Crawford, District Judge of Ratnágiri, confirming the decree of Ráo Sáheb Parashrám B. Joshi, Second Class Subordinate Judge of Rájápur.

Suit for redemption. The property originally belonged to one Bhagvantráo Bájiráo Surve, a Hindu, who in 1843 mortgaged

*Second Appeal, No. 315 of 1894.

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it with possession to the first defendant, who was a Mahomedan, for Rs. 150. Bhagvantráo, the mortgagor, died, and on the 5th April, 1880, the plaintiff purchased at a Court sale his interest in the property. On the 1st March, 1893, he brought this suit for redemption.

The second defendant, who was also a Mahomedan, alleged that the first defendant had assigned his interest in the property to him in 1843 for Rs. 150, and that this sum and a further sum of Rs. 588 for interest were now due to him in respect of the mortgage. He contended that the rule of *dámdupat* did not apply, and that the plaintiff could not redeem without paying off the principal and the whole sum claimed as interest.

The Subordinate Judge held that both plaintiff and defendant being Mahomedans the rule of *dámdupat* did not apply, and directed the plaintiff to redeem the property on payment of Rs. 748 to the defendants. The following is an extract from his judgment:—

"The plaintiff is bound to give amount according to the terms of the original mortgage of 1843. * * . Consideration amount is Rs. 150 and the rate of interest fixed is 12 per cent. per annum. From the amount of interest Rs. 6 are to be deducted every year on account of *swamitva*, so that the amount of interest of 49 years and 10 months comes to Rs. 598. This amount plus the principal Rs. 150 the defendants should get, that is, defendants should get Rs. 748 plus interest at 12 per cent. per annum on Rs. 150 from the 1st March, 1893, until satisfaction or payment."

On appeal by plaintiff the Judge confirmed the decree.

The plaintiff preferred a second appeal.

Mánekshák J. Taleyárkhán, for the appellant (plaintiff):—The original debtor (the mortgagor) being a Hindu, the rule of *dámdupat* applies—*Ganpat* v. *Adarji*[1]. It was wrong to hold that the rule of *dámdupat* was not applicable at all to the present case. It ought to have been held applicable at least so long as the plaintiff's predecessor (the original mortgagor), who was a Hindu, continued to be the debtor. Interest in excess of *dámdupat* would begin to run on 5th April, 1880, when we purchased the interest of the Hindu mortgagor and not before—Stokes' Hindu Law Books, p. 115.

(1) I. L. R., 3 Bom., 312.

Vásudev G. Bhandárkar for the respondents (defendants):—The rule of *dámdupat* is a rule of Hindu law, and it applies to those cases only in which the parties are Hindus, and especially when the debtor is a Hindu—*Dáwood Durvesh* v. *Vullubhdás Purshotam*[1]. In the present case the original debtor was no doubt a Hindu, but at the date of suit a Mahomedan stood in his place. The rule of *dámdupat* is a special privilege and cannot be transferred—*Náráyan* v. *Satváji*[2]; Stokes' Hindu Law Books, p. 112.

PARSONS, J.:—Plaintiff, a Mahomedan, bought in 1880, at a Court sale the right, title and interest of a judgment-debtor, who was a Hindu, and who had mortgaged the property to the defendant No. 1, a Mahomedan, in 1843 for Rs. 150. The mortgage was one with possession; the profits were to be taken in lieu of a part of the interest, and the remainder, Rs. 12 a year, was to be paid by the mortgagor. In point of fact nothing was ever paid.

Defendant contends that as plaintiff, the present owner of the equity of redemption, is a Mahomedan, the rule of *dámdupat* does not apply, and he is bound to pay the whole amount of interest that is due from 1813 to the date of redemption. Plaintiff contends that as the original debtor, the mortgagor, was a Hindu, the rule of *dámdupat* applies throughout.

The Courts below have adopted the defendant's contention. We think this is not quite right. As long as the mortgagor is a Hindu the rule of *dámdupat* applies, so that as soon as the interest equalled the principal, further interest would stop, and no more than double the principal could ever be recovered; double the principal, therefore, is the full amount of debt for which the land could be charged and liable in the hands of a Hindu debtor. A purchase by a Mahomedan would not, in our opinion, affect the past relationship or increase the amount with which the land was charged at the time of the purchase. Neither would the Mahomedan become personally liable.

When, however, a Mahomedan becomes the debtor, the rule of *dámdupat* no longer applies, and there is no limit to the amount of interest recoverable; the stop, therefore, would be

(1) I. L. R., 18 Bom., 227. (2) 9 Bom H. C. Rep., 83.

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removed, [interest would at once begin to run, the debt would increase, and the land in his hands would be liable for the increased debt.

We must, therefore, vary the decree by ordering that on payment of Rs. 300, with Rs. 12 a year for interest from the 5th April, 1880, to date of payment, and costs throughout within six months of this date, plaintiff recover possession of the land mortgaged; and that, in default of such payment, he be foreclosed.

Decree varied.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

1895. *September* 24.

DATTA'TRAYA KESHAV AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPLICANTS, *v.* VA'MAN GOVIND (ORIGINAL PLAINTIFF), OPPONENT.*

Minor—Suit by minor in Mámlatdár's Court for possession—Mámlatdárs' Act (Bom. Act III of 1876)—Civil Procedure Code (Act XIV of 1882).

A minor may sue for possession in the Mámlatdár's Court by his next friend, although the Mámlatdárs' Act (Bom. Act III of 1876) makes no provision for such a suit.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb S. A. Latkar, Mámlatdár of Wái, in a possessory suit.

Plaintiff Váman Govind, a minor, brought the present suit by his next friend Rámchandra Ganesh to recover possession of a certain house at Wái, alleging that one Gangábái had left it to him by her will with the rest of her estate; that on her death in 1894 it came into his possession, and that on the 12th July, 1894, the defendants took forcible possession of it by breaking open the locks on its doors.

The defendants denied that Gangábái had made any will, and contended that she had adopted defendant No. 1, who was the son of defendant No. 2, and that defendant No. 1 was in possession of the house and the whole estate of Gangábái as her sole heir.

* Application No. 99 of 1895 under the extraordinary jurisdiction.