principal unpaid at the time of suit." But it is clear that Jardine, J., did not intend to lay down anything at variance with the principle adopted by Ranade, J.

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Then what is that principle? It is, I think, to be found in that part of his judgment where, dealing with Mr. Khare's reference to Kulluka's comment, he says "There is nothing in these words to justify the contention that it is the original principal, and not the principal due when the arrears of interest accrue."

Obviously the learned Judge takes the limit imposed by the rule of *damdupat* to be the principal due *when the arrears of interest accrued*, and not as Jardine, J., supposed "the balance of principal unpaid at the time of suit." The variation introduced by Jardine, J., was immaterial for the purposes of the case then before the Court, as the principal sum on which the arrears of interest accrued still remained unpaid and undischarged at the date of the suit.

I would, therefore, answer the question submitted for our opinion by saying that a suit against a Hindu debtor for interest actually and legally accrued is not barred merely because the principal sum lent has been paid off.

R. R.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Russell.

BAI DAHI (ORIGINAL APPLICANT), APPELLANT, *v* HARGOVANDAS KUBERDAS (ORIGINAL OPPONENT), RESPONDENT.*

1906. *February* 2.

Civil Procedure Code (Act XIV of 1882), section 198—Judgment to be pronounced in open Court or on some future day—Notice to the parties or their pleaders or recognized agents—Practice in the Mofussil Courts strongly disapproved of.

Section 198 of the Civil Procedure Code (Act XIV of 1882) provides that "the Court, after evidence has been duly taken and the parties have been duly heard either in person or by their respective pleaders or recognized agents,

* Appeal No. 98 of 1904.

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shall pronounce judgment in open Court either at once or on some future day, of which due notice shall be given to the parties or their pleaders."

Failure to observe the provisions of section 198 of the Civil Procedure Code (Act XIV of 1882) and the not uncommon practice in the Mofussil Courts to omit to pronounce judgment in open Court, strongly disapproved of.

APPEAL against the decision of H. L. Hervey, District Judge of Surat, rejecting an application for Letters of Administration.

The appellant Bai Dahi applied for Letters of Administration to the estate of her deceased husband Tribhuvandas Gulabchand.

The opponents Hargovandas Kuberdas and Lallubhai Brijlal opposed the application and set up a will of the deceased appointing them executors.

The District Judge held that the will relied on by the opponents was proved and dismissed Bai Dahi's application on the 6th June, 1904.

Bai Dahi, thereupon, appealed urging *inter alia* that the Judge erred in not delivering judgment in open Court which greatly prejudiced her as the parties had, among other things, effected a settlement during the summer vacation which fact was to be brought to the notice of the Judge on the opening of the Court. In consequence of the said contention a report was called for from the Judge and he (Mr. Dayaram Gidumal, successor of Mr. H. L. Hervey), on a consideration of all the circumstances, reported that the judgment was not pronounced in open Court on the 6th June, 1904.

Hiralal and *M. D. Nanavati* appeared for the appellant (applicant).

L. A. Shah appeared for the respondent (opponent).

JENKINS, C. J. :—This appeal arises out of an application for Letters of Administration made by the appellant Bai Dahi, widow of Tribhowandas, to the estate of her husband.

The application has been dismissed by the District Court.

It is from that decree of dismissal that this appeal has been presented.

The first objection taken to the decree is that it follows on a judgment which was not pronounced as required by the law.

Section 198 of the Code of Civil Procedure provides that "the Court, after the evidence has been duly taken, and the parties

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have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court either at once or on some future day, of which due notice shall be given to the parties or their pleaders."

It is said that the judgment in this case was not pronounced in open Court, and this is confirmed by the report for which we have called.

We strongly disapprove of any failure to observe the provisions of section 198 of the Code; and we desire to express our disapproval, because it has been represented to us that it is not an uncommon practice in the mofussil Courts to omit to pronounce judgment in open Court.

Apart from the fact that it is in direct opposition to an express provision of the law, the practice is highly inconvenient, and deprives the Court and the litigants of a valuable safe-guard against error.

It must often happen that some slip or error occurs in the course of a judgment which the advocate or pleader engaged in the case is able to point out to the Judge with the result that it can be rectified at once and the parties thus saved the expense, trouble and delay which would be involved in seeking a rectification by review or appeal. If the practice exists, we trust it will cease and that a judgment will always be pronounced, as the law requires, in open Court, and that pleaders will attend when judgment is pronounced, and assist the Court by pointing out any error that may occur.

G. B. R.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Russell.

1906.

February 22.

MADHAVJI BHANJI (ORIGINAL DEFENDANT 2), APPELLANT, *v.* RAMNATH DADOBA AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Specific Relief Act (I of 1877), section 31—Sale—Suit for specific performance—Rectification—Mutual mistake—Clear proof.

To establish a right to rectification of a document it is necessary to show that there has been either fraud or mutual mistake. Under the terms of section

* Second Appeal No. 377 of 1905.