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had put in the defendant Sadoji. The Assistant Judge has found that he is the occupant of the office, and as such occupant is entitled to possession of the *vatan* as against the appellants. The latter might maintain the right of Sadoji as their tenant, but in order to do this they had to take his place: *Doe* d. *Knight* v. *Smythe* (*a*). They could not, by introducing themselves as defendants, cause an essential change in the nature of the litigation as already constituted between the plaintiff and Sadoji, or give themselves the advantages of defending instead of attacking parties: see the remarks of Coleridge, J., in *Doe* d. *Willis* v. *Birchmore* (*b*). The plaintiff is the *Pátil* in possession. He placed Sadoji in possession, and, on making out a case for the ejectment of Sadoji, is entitled to obtain, and to retain, possession as against the present appellants until they establish a title superior to his. This it may be open to them to do in another suit, but for the present the decree of the Assistant Judge must be confirmed with costs.

Decree confirmed.

[APPELLATE CIVIL JURISDICTION.]

August 14.

Special Appeal No. 245 *of* 1873.

MA'HA'BUBIBI, WIDOW OF FATE'

MUHAMMAD .....*Plaintiff and Appellant.*

AMINA', WIDOW OF FATE' .....

MUHAMMAD .....*Defendant and Respondent.*

Muhammadan Law—Dower—Limitation—Act XIV. of 1859, § I. *cls.* 12 *and* 16.

The limitation of six years prescribed in clause 16, Sec. I. of Act XIV. of 1859, and not clause 12 of that section, applies to a suit by a Muhammadan widow to recover the amount of her dower, as her right does not constitute an interest in immoveable property.

THIS was a special appeal from the decision of E. Cordeaux, Assistant Judge, F. P., of Puna, at Sholapur, reversing the decree of the Subordinate Judge at Sholapur.

(*a*) 4 M. S. 347. (*b*) 9 A. & E. 669.

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The plaintiff Máhábubibi, the second wife of Fatè Muhammad, sued Aminá, an elder wife of Fatè Muhammad, who was in possession of the property left by him, to recover the amount of her *Mehr* or dower. Fatè Muhammad died more than six and less than twelve years before the institution of the suit. The exact date of his death did not appear.

The Subordinate Judge awarded the claim, but the Court of Appeal rejected it, as being barred by Act XIV. of 1859 Sec. I., cl. 16.

The special appeal was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

Mánikshá Jehángirshá appeared for the appellant.

Janárdan Sakhárám Gádgil for the respondent.

PER CURIAM:—Mr. Manikshá has not been able to refer us to any authority for the proposition that a right to dower is of such a nature as to give a special lien upon the property of a deceased Muhammadan husband. In the case of *Mussamut Janee Khanum* v. *Mussamut Amatool(a)*, it is said that dower stands exactly on the same footing as any other debt of the deceased. In *Mahomed Noor Buksh* v. *Budun Chund Bebee (b)*, it was held that a widow might enforce payment of her dower by a purchaser from the heir of her husband, but no distinction is taken in that case between a claim for dower and any other debt due from the estate. Nor does any distinction seem to be recognized in the opinion of the Muhammadan law officers given in the case of *Mt. Beebee Sahib* v. *Dada Bhaee (c)*. There are passages which impose on the Courts the duty of seeing debts paid before the residue of a Muhammadan estate is distributed: see the first and the last of the above cases; but it is not clear that these passages constitute all debts a charge on the estate, or an interest in the property, in the English sense, which we must suppose to have been the one intended by clause 12 of Sec. I. of Act XIV. of 1859; and in the recent case of Special Appeal No. 88 of 1873,*

(*a*) 8 Calc. W. R. Civ. R. 51. (*b*) Calc. S. D. A. Rep. for 1852, 885.

(*c*) 2 Borr. Rep. 570.

* *Note.*—In that case Westropp, C.J., said that "although the property of a deceased Muhammadan is, when in the hands of his heir, liable to the payment of the debts of the deceased, yet neither in the case of a

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it was expressly ruled that the property of a Muhammadan is not so hypothecated for his debts as to prevent an alienation of it for value by the successor to the deceased debtor. If dower, therefore, stands on the same footing as an ordinary debt, it cannot be regarded as an interest in the immoveable property of the deceased husband. It is rather an obligation on the person of the successor to the estate in virtue of his succession, and one capable of enforcement by lien if the property should be in the possession of the widow. This lien, having once attached, binds the property after the widow, in compliance with the order of a Court, has had to give up possession of it to the heirs; but this rests probably on the principle that the Court will not deprive her without an equivalent of an advantage to which she is entitled rather than that of her having an interest in the property independently of its having ever been in her possession. In the recent case of *Mussamut Bibi Bachun* v. *Sheik Hamed Hosein* (*d*), the Privy Council declined to say that the right of a widow, even in possession, was, in the strictest sense, a lien while recognizing her title to hold for her dower as a creditor with a liability to account. In the absence of authorities for the proposition that the widow's claim for dower constitutes an interest in the immoveable property left by her husband, we must hold that the Assistant Judge was right in applying clause 16, and not clause 12, of Section I. of Act XIV. of 1859 to the claim in this case, and confirm his decree with costs.

Muhammadan (*Mussamut Moona* v. *Chand Monee Gossain*, 7 Calc: W. R. Civ. R. 206), nor of a Hindu (*Jamiyatram* v. *Parbhudas*, 9 Bom. H. C. Rep. 116) is the property of the deceased so hypothecated for his debts as to prevent his heir from disposing of it, before attachment under a decree, to a third party for valuable consideration. A creditor, not holding a special lien, such as a mortgage, &c., on the property, cannot follow it into the hands of a person who has purchased it from the heir of the deceased in good faith and for valuable consideration. The heir, however, is, of course, responsible for the due administration of the purchase money."—ED.

(*d*) 14 Moo. Ind. App. 877.