1893
MARCH 23.

APPELLATE CIVIL.

18 B. 224.

JUDGMENT.

SARGENT, C.J.—The Civil Procedure Code does not, we think, contemplate the representatives of the judgment-debtor being placed on the record after the appellate decree has been passed. There is no express provision for it in the sections relating to execution. The ss. 361 to 372, which relate to changes during suit, speak only of plaintiffs and defendants—terms which seem to show that they were only intended to apply to proceedings up to final determination by the appellate decree, and not to proceedings in execution between the judgment-creditor and judgment-debtor. The course for the judgment-creditor to adopt is that provided by s. 234, in which case the application to execute the decree, having regard to s. 583, would be to the Second Class Subordinate Judge, although by s. 248, the notice to the party against whom execution is applied for would be issued by the First Class Subordinate Judge, to whom the decree had been transferred for execution.

There is, therefore, under the circumstances, no reason for our interfering with the decision of the Second Class Subordinate Judge, and we must discharge the rule with costs.

*Rule discharged.*

---

**18 B. 227.**

## [227] ORIGINAL CIVIL.

*Before Mr. Justice Starling.*

DAWOOD DURVESH (*Plaintiff*) *v.* VULLUBHDAS PURSHOTAM (*Defendant*).* [22nd August, 1893.]

*Hindu law*—Damdupat—*Rule of* damdupat *when applicable—Interest—Amount of interest recoverable by a Hindu—Mortgage—Hindu creditor claiming interest from a debtor not a Hindu—Redemption suit—Supreme Court Charter, cl.* 29.

In a redemption suit brought by a Mahomedan against a Hindu, it was found on taking the accounts that a sum of Rs. 17,519 were due by the plaintiff (mortgagor) to the defendant (mortgagee). Of this sum Rs. 6,500 were the principal and the remainder (Rs. 11,019) was for interest. The plaintiff contended that the defendant being a Hindu was bound by the rule of *damdupat*, and could not claim as interest more than the amount of the principal.

*Held*, that the rule of *damdupat* did not apply; and that the plaintiff was liable to the defendant for the whole amount. The rule of *damdupat* only applies when the debtor is a Hindu.

[R., 21 B. 38 (40).]

ON Commissioner's report. The plaintiff in this suit was a Mahomedan and the defendant a Hindu. On the 1st December, 1865, the plaintiff mortgaged his house in Bombay to one Purshotam Bhimji (since deceased) to secure the principal sum of Rs. 6,500, with interest at 9 per cent. per annum. In 1867 the mortgagee was put into possession, and he received the rents and profits of the house until his death in 1873, when his son, the defendant, took possession.

In 1890 the plaintiff brought this suit for redemption, and on 24th February, 1891, it was referred to the Commissioner to take an account of the principal and interest due upon the mortgage and also of the rents.

* Suit No. 309 of 1890.

1893
AUG. 22.
ORIGINAL CIVIL.
18 B. 227.

and profits of the house received by the original mortgagee and the defendant.

The Commissioner, by his report dated 18th October, 1892, certified that there was on the 22nd August, 1892, a sum of Rs. 17,519-6-6 due by the plaintiff (mortgagor) to the defendant (mortgagee) in respect of principal and interest. This sum was ascertained as follows:—

| | Rs. | a. | p. |
|---|---|---|---|
| Principal sum advanced ... ... ... | 6,500 | 0 | 0 |
| Interest due to 22nd August 1892 ... ... | 15,635 | 4 | 1 |
| | 22,135 | 4 | 1 |
| Less rents received ... | 4,615 | 13 | 7 |
| Balance due ... | 17,519 | 6 | 6 |

[228] The plaintiff filed exceptions to this report. He contended (*inter alia*) that the rule of *damdupat* was applicable, and that under this rule the defendant could not claim from him, as interest, a sum larger than the principal.

*Vicaji*, for the plaintiff, in support of the exceptions:—The defendant is a Hindu and is bound by Hindu law. Under the rule of *damdupat* he cannot claim from his debtor an amount of interest greater than the principal sum due to him—*Narayan* v. *Satvaji* (1); *Ganpat* v. *Adarji* (2). See Supreme Court Charter, cl. 29(3), and Letters Patent of High Court, 1865, cl. 19, which provide that the law of the defendant is to apply. The plaintiff must be presumed to have contracted with reference to this provision of law, and he is, therefore, entitled to the benefit it gives him. In using the word "defendant" the Legislature must have meant defendant, and it is difficult to believe that it was not aware that in a redemption suit it may be that the debtor (mortgagor) is suing the creditor (mortgagee). The Supreme Court Charter (1823) says that matters of contract are to be determined by "the laws and usages of the defendant." These words are quite clear and unambiguous, and the Court will be assuming legislative power if it qualifies or limits their plain and obvious meaning. The fact of a Hindu being a *defendant* seems to be the single point on which the decisions turn. In *Nanchand* v. *Bapusaheb Rustambhai* (4), the rule of *damdupat* was said not to operate "when the defendant is other than a Hindu." In *Ganpat* v. *Adarji* (2), the rule is expressly said to be applicable, because the defendant was a Hindu. There is nowhere any suggestion that, in order to make the rule applicable, the Hindu must not only be the defendant, but also the debtor. *Shri Ganesh Dharnidhar Maharaj Dev* v. *Keshavrav Govind* (5) was also cited.

*Macpherson*, for the defendant.—Here a Mahomedan debtor is claiming the benefit of a rule of Hindu law in order to escape [229] his liability to a Hindu creditor. The rule of *damdupat* does not apply to such a case. It applies only where both parties are Hindus—*Dhondu* v. *Narayan* (6). See also the judgment of Peacock, C. J., in *Ramlal Mookerjee* v. *Haranchandra* (7).

---

(1) 9 B. H. C. R. 83.
(2) 3 B. 312 (332).
(3) The following is the clause of the Charter referred to:—
All matters of contract and dealing between party and party shall be determined .....where one of the parties shall be a Mahomedan or Gentoo, by the law and usages of the defendant.
(4) 3 B. 131.
(5) 15 B. 625.
(6) 1 B.H.C.R. 47.
(7) 3 B.L.R.O. C.J. 130 (134).

1893
AUG. 22.
ORIGINAL CIVIL.
18 B. 227.

JUDGMENT.

STARLING, J.—The plaintiff in this case is a Mahomedan mortgagor who is suing his mortgagee, a Hindu, for redemption of the mortgaged premises. The suit in due course was referred to the Commissioner to ascertain how much was due by the plaintiff to the defendant. During that investigation the plaintiff asked to have the rule of *damdupat* applied, on the ground that the defendant is a Hindu. This the Commissioner refused to do, and reported accordingly. The plaintiff has excepted to the report, on the ground (*inter alia*) that the Commissioner was wrong in not applying that rule.

On the argument of the exception, Mr. Vicaji, for the plaintiff, cited cl. 29 of the Supreme Court Charter, which provides that "all matters of contract and dealing between party and party shall be determined. . . . where one of the parties shall be a Mahomedan or a Gentoo, by the laws and usages of the defendant;" and he argued that, as the rule of *damdupat* was a rule of Hindu law, and the defendant was a Hindu, that rule applied in this case. He was, however, obliged to admit that, if the Hindu had been suing the Mahomedan for sale or foreclosure, the rule would not apply, and it seems strange that the same account should be treated in different ways, according to whether the mortgagor or the mortgagee happens to be the plaintiff.

What, then, is the rule of *damdupat*? If I had been reading for the first time, without the aid of decisions, the Hindu texts cited in *Dhondu* v. *Narayan* (1), I should have formulated from them one of two propositions:—Either that no Hindu creditor receiving principal and interest at the same time from a Hindu debtor is entitled to receive an amount of interest larger than the principal; or else that a Hindu creditor is not entitled to receive from *any* debtor more interest than principal. The first proposition is good law. The second proposition would, I think, have [230] been accepted as good law by Couch, C. J., and Westropp, J., in *Hakma Manji* v. *Ayab Haji* (2), for there they remitted a case to the Small Cause Court for a new trial "to determine whether the rate of interest claimed does not exceed what the plaintiff is allowed to take by Hindu law." The defendant there was a Mahomedan, though a Memon, but the point was not argued on either side. This case has, however, I think, been overruled by that of *Nanchand* v. *Bapusaheb Rustambhai* (3), though it was not cited to the Court in the argument. In this case the Court held that the rule of *damdupat* was not applicable where the defendant was a Mahomedan.

The judgment on the point was very short, and it is, therefore, important to trace the case through its various stages. The District Judge held that the Hindu law forbad a creditor receiving more interest than principal, and that the plaintiff was not at liberty to abrogate the express provisions of the law, even when dealing with a Mahomedan. In the High Court it was argued, for the defendant, that the Hindu law puts an obligation on a Hindu creditor not to receive more interest than principal, but it was held that as "in this case the defendant is a Mahomedan, the Courts below were wrong in applying the Hindu rule of *damdupat*, which can only operate when the defendant is a Hindu," *i.e.*, as I understand the whole case, when the *debtor* is a Hindu.

(1) 1 B.H.C.R. 47. (2) 7 B.H.C.R (O.C.J.) 19. (3) 3 B. 131.

1893
AUG. 22.
ORIGINAL CIVIL.
18 B. 227.

Consequently, after looking at other cases in which the rule of *damdupat* is discussed, I hold that the rule of *damdupat* only applies to cases where the debtor is a Hindu.

In the present case, the debtor is a Mahomedan, and as, in my opinion, the rule of *damdupat*, as interpreted by the Courts, does not apply to any case where the debtor is not a Hindu, there is no law applicable to the defendant in this case which renders it necessary to interfere with the report of the Commissioner as to the amount of interest legally claimable by the defendant.

Attorney for the plaintiff :—Mr. *K. D. Shroff.*

Attorneys for the defendant :—Messrs. *Little, Smith, Frere and Nicholson.*

---

**18 B. 231.**

## [231] ORIGINAL CIVIL.

*Before Mr. Justice Parsons.*

BOMBAY, BARODA AND CENTRAL INDIA RAILWAY COMPANY (*Plaintiffs*) *v.* JACOB ELLAS SASSOON AND OTHERS (*Defendants.*)*

[12th September, 1893.]

*Interpleader—Civil Procedure Code* (*XIV of* 1882), *ss.* 470-473—*Costs of plaintiffs—Claims by plaintiffs against goods in respect of which suit brought.*

In May, 1893, one Sadanand Ramsarmall (defendant No. 4), a resident at Hissar in the Punjab, consigned 600 bags of rapeseed to one Khimji Kanji of Bombay and delivered them to the plaintiffs for carriage to Bombay. While the goods were in transit to Bombay, Sadanand the consignor ordered the plaintiffs to deliver them to his agent Ramgopal Fulchand, instead of to the consignee, and on the 18th May, Ramgopal requested delivery from the plaintiffs. Before the goods could be delivered, however, the firm of E. D. Sassoon & Co. (defendants Nos. 1, 2 and 3) claimed them, alleging that they had been assigned to them by Khimji Kanji for valuable consideration. The plaintiffs thereupon filed this suit praying that the defendants should be required to interplead, and that they should be restrained from suing them (the plaintiffs) in respect of the said goods. The plaintiffs claimed to charge the goods with payment of freight, wharfage and demurrage and their costs of suit.

*Held*:—

(1) that the suit was properly instituted by the plaintiffs as an interpleader suit so as to entitle them to their costs ;

(2) that the fourth defendant was entitled to the goods, subject to the plaintiffs' charge for freight and costs ;

(3) that the plaintiffs' charge for wharfage and demurrage could not be allowed. The goods remained in the plaintiffs' possession not by reason of any neglect or default of the owner to take delivery of them, but by the act of the plaintiffs themselves, who kept and refused to deliver them for their own protection and benefit. All that they could presumably be entitled to, was a reasonable warehouse rent, which, however, they had not claimed.

INTERPLEADER suit. The plaint prayed for an injunction restraining the defendants and each of them from taking proceedings against the plaintiffs in respect of certain goods which had been delivered to them for carriage, and that the defendants should be directed to interplead together concerning their respective claims to the said goods, &c.

The first three defendants were partners in the firm of E. D. Sassoon & Co., which carried on business in Bombay. The fourth defendant

* Suit No. 260 of 1893.