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Special Appeal No. 467 *of* 1863.

DHONDU' JAGANNA'TH, deceased, by his son and heir HARI ..... *Appellant.*

NA'RA'YAN RA'MCHANDRA, deceased, by his sons and heirs KRISHNARA'V and others. *Respondents.*

Hindú Law—Interest—Stamp—Account signed though unstamped used as an admission.

By Hindú Law the amount recoverable at any one time for interest or arrears of interest on money lent cannot exceed the principal, but if the principal remain outstanding, and the interest be paid in smaller sums from time to time, there is no limit to the amount which may be thus received in respect of interest. The previous decisions of the Sadr Court to the contrary overruled.*

A signed account showing a balance up to date, and containing a promise to pay interest upon the consolidated balance, cannot be made use of in evidence to support a claim to interest on that balance, unless it be stamped; but may be used as a *sámádaskat* or simple admission of a balance due, although not stamped.

THIS action was brought by Hari as heir of Dhondú deceased, to recover from the defendants, the representatives of one Náráyaṇ, deceased, the sum of Rs. 2,898-3-0, stated to be the balance of principal and interest due on a bond for Rs. 1,500 passed by deceased Náráyaṇ to deceased Dhondú in Shake 1768 (A.D. 1846).

The defendants contended that as Dhondú, the deceased grantee of the bond in question, left two sons, it was not competent to one of them, the plaintiff, to maintain this action alone; that plaintiff had not obtained the usual certificate of heirship to the deceased; that defendants were not liable as heirs of the deceased grantor; that the claim was excessive, as Rs. 2,722-3-0 had already been paid on account, and that the *onus* lay on plaintiff to show that the balance claimed was the correct one.

The Munsif of Puṇá, A'zam Ardesir Kharsetji, awarded plaintiff the sum of Rs. 1,788, acknowledged to be due by deceased Náráyaṇ in a signed adjustment, less a sum of Rs. 490-14-3 received since the adjustment, to be recovered from the estate of the deceased. Against this decision the parties preferred cross-appeals, and the case was tried by T. C. Loughnan, Judge of Puṇá, who amended the Munsif's decree, and awarded to the plaintiff only so much as would make the whole amount, together with interest already paid, up to Rs. 3,000, being just double the

* See further 3 Bom. H. C. Rep., A. C. J. 23.

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amount of the principal money. The Court made the defendants liable in person. This decision was given on an exposition of Hindú law by the Shástri of the Puná Adálat, which was to the effect that interest should be limited to the amount of the principal debt.

The District Judge was of opinion that the claim being founded on the bond, that alone should guide the decision; and held that the admission contained in the adjustment was valueless, as it was not on stamped paper.

Against this decision the original plaintiff, Hari, preferred a special appeal, on the grounds—*1st*, that the decision of the District Judge was contrary to law, in that interest was not awarded as stipulated for in the bond, contrary to Sec. 10 of Reg. V. of 1827 (*a*); and *2ndly*, that the claim was thrown out on an objection as to a stamp not raised by defendants.

The Special Appeal was argued before SAUSSE, C.J., and FORBES and NEWTON, JJ.

Mádhavráv Krishná and *Vináyakráv Harichand* for the appellant.

Dhirajlál Mathurádás for the respondents.

SAUSSE, C.J., delivered judgment:—This is a special appeal from a decree of the Judge at Puná. It appeared that the defendant had in 1846 executed a bond for Rs. 1,500, which was payable with interest at the rate of 1¼ per cent. per month. Interest had been paid down to 1855, when an account was adjusted and signed by the defendant, who admitted that a balance of Rs. 1,788 was due for principal and interest at that time under the bond, and he also in that adjustment promised to pay the bond rate of interest upon the consolidated sum. In 1858 a plaint was filed claiming this sum of Rs. 1,788, and interest at the bond rate upon it. The plaintiff relied upon the adjustment, but as it was not stamped the Judge refused to receive it as evidence for any purpose whatsoever. The Court below then held, in accordance with several decisions of the late Sadr Diváni Adálat, that as between Hindús a lender could not under any circumstances receive altogether on foot of his accounts more than double the amount of the principal, and having taken an account of all interest received by the plaintiff from time to time since the execution of the bond, the

(*a*) Sec. 10:—"First—Whenever in any transaction a certain rate of interest has been agreed upon, or is demandable by the usage of trade or the custom of the country, such rate of interest shall be lawful and binding on the parties."

Judge found that such interest amounted to within Rs. 226 of double the principal, and gave a decree for that sum only. The plaintiff now appeals against that decision, and insists that he was entitled to recover the amount claimed in his plaint. We entertain no doubt that the decree of the Judge, and the decisions of the late Sadr Diváni Adálat upon which it was founded, were based upon a misapprehension of the Hindú law upon this subject. That law is laid down clearly in Manu, chapter on Judicature and on Law, Civil and Criminal, *shlok* 151, thus:—"Interest on money received *at once*, not month by month or day by day as it ought, must never be more than enough to double the debt; that is, more than the amount of the principal paid up *at the same time*." So in the Mayúkha, p. 113 (Stokes' ed.), citing the above passage, it is added: "But in any one case where it is realised by degrees, at various times also, more than this legal or allowable interest may be levied, according to Vijnaneçvara and other authorities." In Mr. Steele's Summary of the Laws and Customs of Hindú Castes, p. 78, it is stated that "according to Menu it is not allowed to receive *at the same time* interest greater than the amount of the principal." To the same effect are the words of one of the commentators of the Mithilá school, Váchespati Misra, whose views are to be found at p. 63, 1 Colebrooke's Digest, and who, in speaking of this description of interest, states:—"This is paid without diminishing the principal; even though received for a thousand years, it does not reduce the principal." In Strange, Vol. I., p. 299, creditors are warned against allowing interest to run *in arrear* to an amount exceeding the principal, as in such case they could not recover more for interest than would equal the principal sum.

Thus the rule of Hindú law is simply this, that no greater arrear of interest can be recovered at any one time than what will amount to the principal sum; but if the principal remain outstanding, and the interest be paid in smaller sums than the amount of the principal money, there is no limit to the amount of interest which may be thus received from time to time.

The decree of the Court below must be amended, and our decree will award to the plaintiff Rs. 1,788 (the amount found due in 1855), together with the bond rate of interest from that date upon the principal sum of Rs. 1,500 only, and not upon the balance then found due. The adjustment

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which contained the promise to allow interest upon the consolidated balance was not stamped, and could not, under Reg. XVIII., Sec. 10, be received as evidence for that purpose, but as a *sámádaskat*, or simple admission of the balance then due, it was receivable, although not stamped; and the Judge was in error in having declined to receive it for that purpose.

No costs, as prior decisions of this court had been in the respondent's favour.

Decree amended.

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REG. v. VAKHATCHAND and another.

Opium—Keeping Smuggled Opium—Quantity—Reg. XXI. of 1827, Sec. 4.

Where more than one person is convicted, under Sec. 4 of Reg. XXI. of 1827 (*a*), of keeping smuggled opium, each of the convicts is liable to the whole penalty therein imposed, viz., the forfeiture of double the value of the opium, and double the amount of the duty leviable thereon.

The decision of the late Sadr Foujdári Adálat reported in Vol. III. of Morris's S. F. A. Reports, p. 673, overruled.

IN this case the accused were charged with having, on the 10th day of April 1863, kept and concealed at their house in Súrat 32¾ Bengáli seers of smuggled opium, and with having thereby committed an offence punishable under Sec. 4 of Reg. XXI. of 1827.

The case was tried by R. H. Pinhey, Sessions Judge of Súrat, on the 10th of July 1863, with the aid of assessors. The case for the prosecution rested on the evidence of two members of the Súrat police, and a peon employed in the service of the B. B. and C. I. Railway, who proceeded on suspicion to the house occupied by the appellants, and seized them while actually engaged in unpacking the smuggled opium forming the subject of the charge. The statements of the appellants before the committing Magistrate, in which they admitted the seizure of the opium in the house occupied by them jointly, were likewise in evidence.

(*a*) Sec. 4 :—"In case any person or persons shall knowingly harbour or keep or conceal, or shall permit to be harboured or kept or concealed, any smuggled opium, whether or not he or she or they have property or interest therein, such person or persons shall for each such act forfeit double the value of such opium, to be ascertained on its sale by auction, as prescribed in Section 6, clause 5, and double the amount of duty leviable on it, which forfeitures shall be enforced in the mode prescribed in Section 7."