

Referred Case.

KHUSHA'LCHAND LA'LCHAND v. IBRA'HIM FAKI'R.

Hindú Law—interest—Act XXVIII. of 1855.

By the Hindú Law interest exceeding in amount the principal sum cannot be recovered *at any one time.*

Act XXVIII. of 1855 has not, by repealing Sec. 12 of Reg. V. of 1827, or otherwise, altered this rule of the Hindú law.

CASE referred for the decision of the High Court, by C. G. Kemball, Acting Judge of the Súrat District, under Sec. 28 of Act XXIII. of 1861. 1866.
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“ An action was brought in the court of Mr. Mangeshbrá Balvant, one of the Munsifs of Súrat, by one Hindú against another to recover the sum of Rs. 118-12; being Rs. 50, principal, with interest amounting to Rs. 68-12. The Munsif found, looking to the wording of the instrument on which the action was brought, and the facts in evidence, that the aggregate amount claimed was really due; but being of opinion that, under the provisions of the Hindú Law, it was not competent to him to allow interest in excess of the principal, he passed a decree in favor of the plaintiff for the sum of Rs. 50 principal *plus* Rs. 50 interest=Rs. 100.

“ It must be mentioned that it was admitted in the course of the investigation that a sum of Rs. 44 had been repaid by the defendant to the plaintiff; and also that the instrument contained a clause to the effect that, in the event of interest being due, all instalments paid by the defendant should be applied, in the first instance, to wiping off the interest.

“ Against the Munsif's decision the defendant appeals, on the ground that, as by the Hindú Law the creditor could only claim as interest a sum equal to the principal, so the Munsif ought to have deducted the Rs. 44, admitted to have been paid, from the Rs. 50 demandable by the law affecting

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the litigants ; and, therefore, should have passed a decree in favor of the plaintiff for the sum only of Rs. 56, viz. Rs. 50 principal *plus* Rs. 6 balance of interest. And the plaintiff took the opportunity, under Sec. 348 of the Civil Procedure Code, of objecting to the decision of the lower court, in so far as it rejected his claim to the full amount of interest found due.

“The points on which the opinion of the Honorable Judges is solicited are, 1st, whether, supposing the rule of Hindú Law regarding interest applicable, the Court is bound to take into consideration the whole sum received in liquidation of the interest, and to decree only the difference between the amount repaid and the sum of the principal ; 2ndly, whether, in adjudicating between two Hindús, on a claim to interest which exceeds the amount of the principal, the Court is bound to have regard to the rule of Hindú Law on the subject.

“On the first point my opinion is that, supposing the Munsif to have rightly concluded that he was prevented awarding in the matter of interest an amount in excess of the sum decreed, the rule of Hindú Law applies only to a lump claim preferred for adjudication. Thus, if interest had been running on for years, and the instalments paid on that account had far exceeded the principal, I imagine that still the creditor would be entitled to a decree for a sum, on account of interest, equal to the principal, supposing that amount to be actually due,

“On the question raised by the respondent, I am of opinion that, in the face of Act XXVIII. of 1855 (an Act for the Repeal of the Usury Laws) the Munsif was wrong in having regard to the rule of Hindú Law on the subject. Under Reg. V. of 1827, which contained the old law on the subject of interest, it was expressly laid down, in Sec. 12, ‘that this regulation is not meant to interfere with the rule of Hindú Law, which limits the interest of money to the amount of the principal, and which shall accordingly be maintained by the courts in all applicable cases.’ Therefore, in all cases coming before the courts, interest was never allowed

to a greater extent than the amount of principal. But I apprehend that this state of things was altered by the introduction of Act XXVIII. of 1855, which repeals the very section I have just quoted; and declares in its stead (Sec. 2) that 'In any suit in which interest is recoverable, the amount shall be adjudged or decreed in the Court at the rate (if any) agreed upon by the parties; and if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable.' I consider, in the first place, that, by the repeal of the law which declared that the rule of Hindú Law shall be maintained in all applicable cases, it was intended that that rule should no longer be maintained; and, in the second place, that, to say that Sec. 2 of Act XXVIII. of 1855 says only '*at the rate,*' and therefore the rule of Hindú Law may be applied, is apparently playing with words. To me it appears that, under the last mentioned Act, claims to interest expressly agreed upon, ought only to be rejected when barred by the Limitation Act."

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The case was heard before COUCH, C.J., and NEWTON, J.

PER CURIAM:—On the 1st question the Court are of opinion that the rule of Hindú Law is that, as was decided in Special Appeal No. 467 of 1863 (*a*), no greater amount of interest than the principal sum can be recovered at any one time.

On the 2nd question the Court are of opinion, in conformity with the decision of the High Court made on the 23rd of March 1863, that Act XXVIII. of 1855 has not, by repealing Sec. 12 of Reg. V. of 1827, or otherwise, altered the above rule of Hindú Law.

(*a*) 1 Bom. H. C. Rep. 47.



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RAMKRISHNABHAT *v.* VITHOBA bin MALHA'RJI'.

CASE referred for the decision of the High Court, by the Acting Judge of the Court of Small Causes at *Puná*, under Sec. 13 of Act XLII. of 1860.

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March 23.
Referred Case.