

1868.
Oct. 7.*Referred Case.*

SADA'SHIV MORESHIVAR *Plaintiff.*
 HANSO bin SHRA'VAN, *Defendant.*

Perishable Articles—Execution.

Articles of such a perishable nature that they cannot be kept for fifteen days and sold, according to the Civil Procedure Code, ought not to be taken in execution.

Under Act X. of 1867, Janardhan Vasudev, Judge of the Small Cause Court at Puná, submitted for the consideration of the High Court the question “whether green fruits, green vegetables, milk, fish, meat, and other articles of a like-perishable nature should be attached in execution of a decree.” The following was his opinion on the point:—

“They have not been exempted from attachment by Sec. 205 of the Civil Procedure Code; but as they cannot be sold, under Sec. 249, until after the expiration of at least fifteen days from the publication of the notification of sale, and as they will become rotten before the expiration of such period, nothing will be gained from the attachment, which in effect will be a nullity, while it will cause an unnecessary loss of property to the defendant. I am, therefore, of opinion that until the present law, which forbids the sale of any property taken in execution before the expiration of fifteen days from the notification of sale, is modified, perishable articles of the nature above alluded to should not be attached.

“It is held by some Judges that such perishable articles can be sold simultaneously with the attachment, under Sec. 250 of the Code. I am, however, not of that opinion. According to my reading of that section, the process for sale may be issued simultaneously with the process for attachment, but in no case can such process order the sale to be made instantaneously, or at a shorter notice than fifteen days. The section in question merely provides for a simultaneous *issue* of the two *processes* in certain cases at the discretion of the Court, and not for a simultaneous *attachment* and *sale*. It gives no discretion to the Court as to the time

within which the property taken in execution may be ordered to be sold after attachment, that point being provided for by Sec. 249, which directs that in the case of moveable property 'the sale shall not take place until after the expiration of at least fifteen days,' &c."

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SADASHIV
MORESHVAR
v.
HANSO SHRA-
VAN.

PER CURIAM (COUCH, C. J., NEWTON and GIBBS, JJ.) :—
Articles of such a perishable nature that they cannot be kept for fifteen days, and sold according to the Code of Civil Procedure ought not to be taken in execution. The Court concur in the remarks of the Judge upon Sec. 250 of the Code.

Special Appeal No. 384 of 1868.

Oct. 8.

NA'RA'YAN bin BA'BA'JI *et al.* *Appellants.*
GANGA'RAM bin KRISHNA'JI *Respondent.*

Mortgage—Interest—Rule of Hindū Law.

The rule of Hindū Law, which declares that interest exceeding in amount the principal sum cannot be recovered at any one time, is not applicable to mortgage transactions.

THIS was a Special Appeal from the decision of A. C. Watt, Assistant Judge of the District of Sātárá, in Appeal No. 444 of 1867, confirming the decree of Raghvendra Rámáji, Munsif of Wái.

The plaintiff sued to redeem a house on payment of the mortgage money. The defendants contended that, by the conditions of the mortgage bond, the house had become their absolute property.

The Munsif found that the principal sum due on the mortgage was fifty rupees, but as the defendants had, on the faith of decisions previous to *Rámji v. Chinto*, made additions, he considered eighty rupees was also due to them on that account. With regard to interest, the Munsif restricted it to the amount of principal. His decree accordingly was for one hundred and eighty rupees.

The Assistant Judge, on appeal, concurred in the Munsif's view, and confirmed his decree.

The Special Appeal was argued before WARDEN and GIBBS, JJ.