

such rank and station in life as, according to the customs and usages of Hindus, precluded her from appearing in public.

1880

MONINDRO-  
BHOOSUN  
BISWAS  
v.  
SOSHER-  
BHOOSUN  
BISWAS.

Mr. *Hill* for Juggodumba Dasee.

Mr. *Dutt* for the plaintiff consented to the application, but asked that the applicant might be ordered to pay the costs of the commission, or to pay estimated costs of the commission into Court. He referred to Belchambers's Rules and Orders, 326; Civil Procedure Code, s. 397; and *Nusrat Banoo v. Mahomed Sayem* (1).

Mr. *Jackson*, Mr. *Allen*, and Mr. *Lee* for the other defendants.

WILSON, J., refused to order the applicant to pay the costs of the commission, or to order her to pay the estimated costs into Court, and ordered the commission to issue. Costs to be costs in the cause.

Attorneys for the plaintiff: Messrs. *Mookerjee* and *Deb*.

Attorneys for the defendants: Baboo *G. C. Chunder*; Messrs. *Swinhoe, Law, & Co.*; Baboo *M. D. Sen*; and Messrs. *Dignam* and *Robinson*.

Before Mr. Justice Wilson.

RAMCONNOY AUDICARRY v. JOHUR LALL DUTT.

1880

June 7.

Hindu Law—Interest exceeding Principal—Usury Laws—Act XXVIII of 1855—Contract Act (IX of 1872), s. 10.

According to Hindu law, arrears of interest more than sufficient to double the debt are not recoverable, and the law upon this point was not affected by the Act (XXVIII of 1855) for the repeal of the Usury Laws, nor by s. 10 of the Contract Act.

*Semle*.—The rule of Hindu law in question has not properly anything to do with the legality or illegality of any contract, but is rather a rule of limitation.

THIS was a suit to recover the sum of Rs. 1,101-5-4, being the principal and interest due upon a promissory note for Rs. 400.

1880

RAMCONNOY  
AUDICARYv.  
JOHUR LALL  
DUTT.

Mr. Trevelyan for the plaintiff.

The defendant did not appear.

WILSON, J.—This suit, which was undefended, was upon a promissory note. The note was for Rs. 400, was dated the 4th June 1877, was payable on demand, and bore interest at 5 per cent monthly. The only question was, what amount was recoverable in respect of interest.

The parties are Hindus; and it is clear that their rights are governed by the Hindu law, unless there be some Statute providing a different rule. I think it is also well settled that, by Hindu law, arrears of interest more than sufficient to double the debt are not recoverable: Menu, Chap. VIII, 151; Col. Dig., Bk. I, Chap. II, Sec. 2, pl. xliii; *Dhendu Jaganmath v. Narayan Ram Chandra* (1), *Khushal Chand Lalchand v. Ibrahim Fakir* (2), *Ramkrishnabhat v. Vithoba* (3), and *Narayan v. Satvaji* (4).

Has then any Statute altered the law upon this point to be applied to Hindus in this Court? The Bombay cases above referred to decide that Act XXVIII of 1855, the Act for the repeal of the usury laws, had no such effect; see also *per* Peacock, C. J., in *Ram Lall Mookerjee v. Haran Chunder Dhar* (5), and *per* Phear, J., in *Mia Khan v. Bibi Bibijan* (6).

It was, however, argued that the Contract Act had altered the law upon the point in question, and s. 10 of the Act was referred to. That section says:—"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration, and with a lawful object, and are not hereby expressly declared to be void." This section does not, however, in my judgment, make anything lawful which was otherwise unlawful. Moreover, I doubt whether the rule of Hindu law in question has properly anything to do with the legality or illegality of any contract. I think it is rather a rule of limitation.

As then no statutory provision has been pointed out controlling the Hindu law in the matter, I am, I think, bound to

(1) 1 Bom. H. C., A. C., 47.

(2) 3 *Id.*, A. C., 23.(3) *Id.*, 25

(4) 9 Bom. II. C., A. C., 83.

(5) 3 B. L. R., O. C., 130 at p. 134.

(6) 5 B. L. R., 505.

apply that law to the present case. And the decree will be for the principal and a sum for interest equal to the principal—in all Rs. 800, without costs (1).

1880

RAMCONNOY  
AUDIGARRY  
v.  
JOUR LALL  
DUTT.

*Judgment for plaintiff.*

Attorney for the plaintiff: Baboo Sita Nath Dass.

*Before Mr. Justice Wilson.*

GREESH CHUNDER SEIN v. GUDADHUR GHOSE.\*

1880  
July 19.

*Assignment of Decree—Claim of Attaching Creditor—Assignee's incomplete equitable Title.*

A brought a suit against B, which was dismissed with costs. A subsequently brought a suit against C, in which he obtained an *ex parte* decree, and assigned his interest under the decree to D and E. D and E neglected to have their names substituted for that of A on the record. C applied for and obtained an order, setting aside the *ex parte* decree, and allowing him to come in and defend the suit on deposit in Court of the sum sued for. At the rehearing, the suit was again determined in favor of A. B thereupon, in execution of his decree for costs, attached the moneys in the hands of the Court in the suit of A against C. D and E obtained an *ad interim* injunction restraining B from meddling with the money, and put in their claim under the assignment. *Held*, that the incomplete equitable title of D and E could not prevail against the right of B, the attaching creditor."

ONE Greesh Chunder Sein instituted against Gudadhur Ghose and Ram Chunder Singh, in 1876, a suit to set aside a decree obtained by Gudadhur against Ram Chunder Singh; on the ground that such decree was fraudulent and deprived him (Greesh Chunder) of his rights against Ram Chunder Singh. This suit was dismissed with costs, and the judgment affirmed on appeal.

On the 30th August 1879, Greesh Chunder Sein brought a suit against one Obhoy Churn Mullick to recover Rs. 1,423, and on the 17th November obtained against him an *ex parte* decree. Greesh Chunder, on the 2nd December 1879, assigned by deed his interest in such decree to Sultan Chand and Normul for Rs. 940.

\* Motion in Suit No. 320 of 1876.

(1) See also *Hakma Manji v. Meman Ayab Haje*, 7 Bom. H. C., O. O., 19.