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to recover interest in excess of the principal, we are of opinion that the aforesaid s. 2, Act XXVIII of 1855, is also conclusive upon this point. Our attention has been called to several decisions of the Original Side of this Court and of the Bombay High Court; they were based upon the provisions of the Charter of the late Supreme Court, by which it was provided that the Hindu law was to govern contracts between parties who were Hindus in suits before the Supreme Court. But in the mofussil there was a Regulation, *vis.* Regulation XV of 1793 distinctly providing rules under which interest was to be allowed, and s. 6 of that Regulation provided that in no case interest was to exceed the principal. That section was expressly repealed by Act XXVIII of 1855, and the only section enacted in lieu of s. 6 and other sections repealed was s. 2 of the Act, which says: "In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties." That being so it is quite clear that we are bound, under s. 2, Act XXVIII of 1855, to award the full interest that is due under the terms of the bond.

The appeal will, therefore, be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Miller and Mr. Justice Wilkinson.

NAJHAN (DEFENDANT) v. MAHOMED TAKI KHAN *alias* PEER
 BUX KHAN AND ANOTHER (PLAINTIFFS).*

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 April 19.

Civil Procedure Code (Act XIV of 1882), s. 244, cl. (a).—Question relating to the execution of the decree—Separate Suit.

In a suit to recover possession of land, the defendants resisted execution on the ground that they were cultivators, and that the decree only authorised the plaintiff to recover possession as proprietor. The objection was overruled, and the defendants were ejected. They then sued to set aside the order made in the execution proceedings and to recover possession.

Held, that the suit was barred under s. 244, cl. (a.), of the Civil Procedure Code.

THIS was a suit to recover ten bighas of jote land in Mulna Chuk. The plaintiffs alleged that it was their mourasi jote; that

* Appeal from Appellate Decree No. 746 of 1882, against the decree of Baboo Poreah Nath Benerjee, First Subordinate Judge of Patna, dated the 27th February 1882, affirming the decree of Baboo Kedar Nath Roy, Additional Munsiff of that District, dated the 30th May 1881.

one Khairat Ali took an izara from Mussamut Latifa, the proprietor, which was to continue until the zuripeshgi was paid; and that on the 7th of July 1855, Khairat Ali sold his izara right to Akbar Khan, and that they held their jote both under Khairat Ali and Akbar Khan. The plaintiffs also alleged that Akbar Khan, on the 21st July 1857, sold his izara right to the wives of the plaintiffs, to whom also they paid rent. The defendant, who afterwards purchased the proprietary rights in Mulna Chuk, sued the present plaintiffs and their wives to recover possession of the disputed land. In that suit the present plaintiffs pleaded that they were mere cultivators, and that their wives were the real purchasers, and their wives admitted having purchased the izara right. On the 11th September 1879, a decree was made for possession in the last mentioned suit. The present plaintiffs resisted execution on the ground that they being cultivators could not be ejected. This objection was disallowed on the 17th of April 1880, and the present plaintiffs were dispossessed. They then instituted the present suit to recover possession and to set aside the order of the 17th April 1880.

Both the lower Courts, holding that the suit was not barred under s. 244 of the Civil Procedure Code, gave the plaintiffs a decree. The defendant appealed to the High Court.

Munshi *Mahomed Yusuf* for the appellant.

Mr. *Twidale* for the respondents.

The judgment of the Court (MITTER and WILKINSON, JJ.) was delivered by

MITTER, J.—We are of opinion that this suit ought to be dismissed as barred under s. 244 of the Civil Procedure Code. The defendant appellant before us brought a suit against the present plaintiffs, and also certain other persons, including the wives of the present plaintiffs, as defendants. That suit was for possession of a piece of land, which includes the disputed land. In that suit the plaintiffs alleged that they were in possession as ryots. The question whether they were entitled to remain in possession of the land as ryots or not, was not gone into, but on the 11th of September 1879 a decree for possession was given in favour of the defendant appellant, and the direction in the decree was that

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1883 the plaintiff in that case, *viz.*, the appellant before us, was to recover possession of the land claimed in the month of Pous 1287-
 NAJHAN In execution of that decree possession was obtained by the
 MAHOMED
 TAKI KHAN, appellant. Thereupon the plaintiffs in this suit appeared as objectors, and contested the right of the appellant before us to eject them from the land now in dispute. Their contention was that the decree awarded to the appellant only the right to recover possession of the property as proprietor, and that it did not extinguish their right as tenants. The matter was gone into, and the Court executing the decree on the 17th April 1880, held that under it the appellant was entitled to recover khas possession of the property by evicting the plaintiffs. Thereupon the present suit was brought to set aside that order and to recover possession of the land in dispute upon the tenant right of the plaintiffs. It appears to us that the question which was decided by the execution Court was a question which came under cl. (c) of s. 244. That clause is to the following effect: "Any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree." Now this question, *viz.*, whether under the decree the defendant appellant was entitled to evict the plaintiffs, was a question which arose between the parties to that suit. There is no dispute as to that. It also appears to us that it was a question relating to the execution of that decree. The contention of the plaintiffs was, that the real effect of that decree was simply to entitle the decree-holder to obtain possession as proprietor. On the other hand the contention of the appellant was that he was entitled under the decree to take khas possession of the property by evicting the plaintiffs in this suit. It was therefore a question relating to the execution of that decree, *viz.*, a question as to the construction of it. The matter which was in dispute falling within cl. (c) s. 244 no separate suit would lie. Section 244 says that the questions enumerated in clauses (a), (b) and (c) shall be determined by order of the Court executing the decree and *not by separate suit*. The plaintiffs, if so advised, might have appealed against the decision of the execution Court, but

they are precluded from maintaining a separate suit by the express words of s. 244. 1883

We, therefore, set aside the decision of the lower Appellate Court, and dismiss the plaintiffs' suit with costs in all the Courts. NAJHAN
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Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

SHADULLA HOWLADAR AND ANOTHER v. THE EMPRESS. *

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May 7.

Code of Criminal Procedure, (Act X of 1882), s. 309—Trial by Assessors—Evidence—Summing up of Evidence—Delivery of opinions of Assessors—Sessions Judge, Duties of.

The power of summing up the evidence given by s. 309 of the new Code of Criminal Procedure, Act X of 1882, is intended to be exercised in long or intricate cases, and the Sessions Judge should confine himself to summing up the evidence and should not obtrude on the assessors his opinion of the worthlessness or otherwise of certain portions of the evidence.

The Sessions Judge should also conform strictly to the words of s. 309, and require *each* assessor to state his opinion orally.

The Sessions Judge should not utilize the services of the pleader for the prosecution for the purpose of recording his summing up to the assessors. If he is not capable of recording the substance of it himself, he should employ an independent person for that purpose.

THIS was an appeal from a conviction and sentence of the Sessions Judge of Furreedpore. The facts of the case are sufficiently set out in the judgment of the High Court,

Baboo *Grija Sunker Mozoomdar* for the appellants.

The Deputy Legal Remembrancer (Mr. Kilby) for the Crown.

The judgment of the Court (PRINSEP and O'KINEALY, JJ.) was delivered by

PRINSEP, J.—After considering the evidence on the record in this case, we are of opinion that the appellants have been rightly

* Criminal Appeal No. 184 of 1883 against the order of F. J. G. Campbell, Esq., Officiating Sessions Judge of Furreedpore, dated the 12th March 1883.