

Before Mr. Justice Mitter and Mr. Justice Wilkinson.

HET NARAIN SINGH (DEFENDANT) v. RAM DEIN SINGH AND
OTHERS (PLAINTIFFS).*

1889
April 20.

*Hindu law—Contract—Interest exceeding principal—Suits between Hindus in
Mofussil—Act XXVIII of 1855, s. 2.*

In suits between Hindus in the mofussil interest exceeding the principal
may be awarded.

Baboo Chunder Madhub Ghose and Baboo Aubinash Chunder
Bannerjee for the appellants.

Baboo Mohesh Chunder Chowdhry and Baboo Raghoo Nundun
Persad for the respondents.

THE facts of this case sufficiently appear from the judgment of
the Court, which was delivered by

MITTER, J.—This is an appeal against the decision of the
Subordinate Judge of Shahabad in a suit upon a bond. The
only question raised in the appeal is, whether the decree for
interest from the date fixed in the bond for the repayment of
the loan at the particular rate mentioned in the bond is correct
or not. There is also another question raised, *viz.*, that the
plaintiffs are not entitled to recover interest in excess of the
principal. As regards the question of rate the terms of the bond
are quite plain. It says: "I do declare and give out in writing
that I shall, without any objection, repay the said amount, prin-
cipal with interest at the rate of Rs. 1-4 per cent. per mensem, on
the 30th Bhadur 1277 Fusli. If I fail to do so on that date as
promised, then on the expiration of that date, *i. e.*, from the 1st
Assin 1278 Fusli, interest on the said amount of loan at the rate
of Rs. 1-8 per cent. per mensem, till the date of repayment, shall
be due from me." We are bound to decree the rates agreed
upon under s. 2, Act XXVIII of 1855, and there is no ground
upon which we can say that this stipulation was in the nature
of a penalty. Then as regards the question raised before us,
as to whether under the Hindu law the plaintiffs were entitled

* Appeal from Original Decree No. 1 of 1882, against the decree of
Baboo Ram Persad, Sub-Judge of Shahabad, dated the 22nd August 1881.

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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).*

1883
 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.