

stipulated that the whole amount of Rs. 2,000 should be paid. The provision that, in default of payment on the date stipulated, interest on the whole amount of Rs. 2,000 should be paid at the rate of two per cent per mensem from the date of the execution of the bond was so far penal that in effect it more than doubled the rate of interest for the period above-mentioned. That penalty ought not, in our opinion, to be enforced. The rate of two per cent per mensem is not so unusual as to be unreasonable. (The judgment then proceeded to determine what sum was due to the plaintiff).

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MAZHAR ALI
KHAN T
v.
SARDAR MA

Decree modified.

CRIMINAL JURISDICTION.

1880 -
March 11.

Before Mr. Justice Straight.

EMPRESS OF INDIA v. BHUP SINGH.

*Reference to High Court under s. 296 of Act X of 1872 (Criminal Procedure Code)
by Court of Session.*

A Court of Session, after it had asked the assessors their opinion in a case which was being tried by it, suspended the trial of the case and made a reference to the High Court under s. 296 of Act X of 1872, on a question of jurisdiction which had arisen in the trial of the case. *Held* that it was not intended that that section should be so used, and the Court of Session must dispose of such question itself.

This was a case referred to the High Court by Mr. W. C. Turner, Sessions Judge of Agra, under s. 296 of Act X of 1872. The Judge in referring the case observed as follows:—‘The assessors unanimously found the accused Bhup Singh guilty of the offence specified in s. 363 of the Penal Code. S 9 of Act XI of 1872, which was in force at the time the offence was committed (committed to Sessions on the 30th September, 1879), provides that no charge as to any offence shall be inquired into in British India, unless the Political Agent, if there be such, for the territory in which the offence is said to have been committed, certifies that, in his opinion, the charge is one which ought to be inquired into in British India. The committing Magistrate appears to have overlooked the section quoted above, and I would therefore submit the case for orders to the Hon'ble Court as to whether the Political Agent

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EMPEROR OF
INDIA
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should be called on, first, to certify that the charge is one which should be inquired into in British India, and, if his reply be in the affirmative, that a new trial be had, or if, as the accused has not apparently been prejudiced in his defence, and the Political Agent now certifies, as above, judgment can be given on the evidence recorded."

STRAIGHT, J.—It appears to me that the Judge has adopted an unusual and very inconvenient course, in suspending the conclusion of the trial of Bhup Singh for the purpose of making a reference to the Court on a question of law that has arisen in the course of it. I do not think it ever was intended that s. 296 should be so used. The Sessions Judge has the whole case fully before him, and is in possession of all the materials necessary for him to give his judgment. If he decides wrongly, there is ample power in the Local Government on the one hand, or the accused on the other, to appeal to this Court and have the matter set right, and I certainly do not think that, at this stage, I am called upon to advise the Sessions Judge as to the view he should take. Upon his own responsibility and in the exercise of his discretion he must dispose of the case, and, if he feels there is substantial force in the point that has arisen in reference to the charge under s. 363, Penal Code, he must not hesitate to acquit. I would point out to him that as yet he has passed no decision upon the charge under s. 420, Penal Code, though he took the opinions of the assessors upon it. Probably in respect of this he will find that no difficulty of jurisdiction arises. The record will be returned and he will dispose of the case.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spinkie.

MOTI BIBI (DEPONDANT) v. BIKANU (PLAINTIF)*

Appeal—Limitation.

B sued *M* and *T* for money due on a bond, and on the 27th April, 1877, obtained a decree against *T*; the suit against *M* being dismissed. *T* applied for a

* Second Appeal, No. 719 of 1879, from a decree of H. Lushington, Esq., Judge of Allahabad, dated the 12th February, 1879, modifying a decree of Rai Makhan Lal, Subordinate Judge of Allahabad, dated the 29th June, 1878.

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March 15.