

committed by the accused. S. 86 of the Penal Code applies strictly to this case.

I would set aside the conviction under s. 304A and convict accused under s. 325 of the Penal Code. Considering the unprovoked character of the attack and the circumstances attending it, it appears to me one which is not sufficiently punished by a fine. I would sentence the accused G. W. O'Brien to one year's rigorous imprisonment, and to a fine of Rs. 100, or a further period of three months rigorous imprisonment. So much of the fine, if paid, that exceeds the fine proposed, should be returned to the accused.

1880

EMPEROR
INDIA
v.
O'BRIEN.

APPELLATE CIVIL.

1880
March :

Before Mr. Justice Pearson and Mr. Justice Spinkie.

MAZHAR ALI KHAN AND ANOTHER (DEFENDANTS) v. SARDAR MAL,
(PLAINTIFF) *

Bond—Interest—Penalty.

The defendants on the 8th May, 1869, gave the plaintiff a bond for the amount of Rs. 2,000 on the 16th February, 1870. This amount consisted of two items, viz., Rs. 1,650, principal, and Rs. 350, interest in advance at the rate of two per cent. per mensem for the period between the date of the bond and its due date. The bond provided that, in default of payment on the due date, 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 bond. *Held*, in a suit on the bond in which interest claimed at the rate of two per cent. per mensem from the date of the bond, this provision was penal, and the penalty ought not to be enforced.

THIS was a suit on a bond executed by the defendants in favour of the plaintiff on the 8th May, 1869. The material portion of this bond was as follows:—"We Mazhar Ali and Fazal Ali do declare that we have borrowed Rs. 1,650 from Sardar Mal: adding Rs. 350 to this sum on account of future interest, we admit that Rs. 2,000 is payable by us to the lender: we promise to pay that amount without interest at the close of the month of Magh, Sambat 1926 (16th February, 1870,): should we fail to pay the amount of principal and interest entered in the bond at the time

* First Appeal, No. 6 of 1880, from a decree of C. W. Moore, Esq., Judge of Allahgarh, dated the 23rd September, 1879.

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FAZLUR ALI
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fixed, then we will pay interest on that amount, *viz.*, Rs. 2,000, at two rupees per cent. per mensem from the date of the bond, in addition to the interest stipulated to be paid as above." The defendants having failed to pay the amount of the bond on the due date, the plaintiff claimed interest on the principal amount sued for at the rate of two rupees per cent. per mensem calculated from the date of the bond to the date of the institution of the suit, *viz.*, the 23rd June, 1879. The defendants contended that the stipulation to pay interest from the date of the bond at two rupees per cent. per mensem, in case of default, was penal and should not be enforced. The Court of first instance disallowed this contention, observing as follows:—"The Court finds that the condition as to paying interest at twenty-four per cent. (per annum) in the event of default, from the date of the execution of the bond, whether penal or not, is not unreasonable: the rate is by no means uncommon, and though no doubt the terms of the bond, in the event of default as regards the period between execution and the first date fixed for payment, may seem hard to the defendant debtors, yet they agreed to those terms with their eyes open: nor were they obliged by circumstances to take the loan: the bond shows that they took the money with a view to speculating in indigo, and no doubt they looked for a profit which would much more than cover the rate of interest fixed in the bond: the Court sees no reason why, because or when the defendant debtors failed in their speculation, they should be allowed to evade their agreement willingly made."

The defendants appealed to the High Court.

Pandit *Ajudhia Nath*, for the appellants.

Munshi Kashi Prasad and *Lala Har Kishan Das*, for the respondent.

The judgment of the High Court (PEARSON, J. and SPANKS, J.) was delivered by

PEARSON, J.—The amount of the bond consisted of two items, *viz.*, Rs. 1,650, principal, and Rs. 353, interest in advance at the rate of two per cent. per mensem for the period between the date of the bond and the 16th February, 1870, the date on which it was

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).

1880

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. 293 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