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Mukerji, J.

of action. Now what can be his cause of action if he was never called upon by the court, before which the complaint was filed, to appear and answer a charge, or even to appear and attend the proceedings? A complaint may be filed and the accused person may not even hear of it, although behind his back an inquiry may be ordered under section 202 of the Criminal Procedure Code and some witnesses may be examined. The plaintiff in the civil suit is not at all hurt. He may not have, as I have said, heard of the fact that a complaint had been filed against him. Can it be said that the plaintiff has a cause of action? The answer should be, in my opinion, in the negative.

A suit in the circumstances of the present case must, again, fail on the ground that no damage has occurred. Tort has been defined as "wrong independent of contract." A wrong, therefore, is essential in order that a suit based on tort may be maintained. Now if the plaintiff has not been asked to appear in a court of law, or if he appears, as in the case of *Subhaq Chamar v. Nand Lal Sahu* (1), of his own motion, it cannot be said that he has suffered any damage.

On principle, therefore, the suit cannot be maintained, if notice has not been issued to the plaintiff to appear and answer a criminal charge.

Before Mr. Justice Pullan and Mr. Justice Niamat-ullah.

SHEOBANS RAI (PLAINTIFF) v. MADHO LAL
 (DEFENDANT)*

Usurious Loans Act (X of 1918), section 2(3)—Negotiable Instruments Act (XXVI of 1881), section 79—Promissory note—Interest—Power of court to reduce contractual rate of interest.

The Negotiable Instruments Act must be read with other enactments passed subsequent thereto, and section 79 of the

*First Appeal No. 524 of 1927, from a decree of Lachman Prasad, Additional Subordinate Judge of Agra, dated the 9th of May, 1927.

(1) (1928) I.L.R., 8 Pat., 285.

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Act does not exclude the jurisdiction of the court conferred on it by the Usurious Loans Act. Section 2(3) of the latter Act makes it applicable to all suits for the recovery of loans advanced after the commencement of that Act, including not only suits based on bonds but also suits based on negotiable instruments. The court, therefore, has powers, in a proper case according to the Usurious Loans Act, to reduce the contractual rate of interest on a promissory note.

Messrs. *S. K. Dar and N. P. Asthana*, for the appellant.

Dr. Kashi Narain Malaviya, for the respondent.

PULLAN and NIAMAT-ULLAH, JJ. :—This is a plaintiff's appeal arising out of a suit brought by him for recovery of Rs. 10,616 on foot of a promissory note, dated 8th March, 1925, executed by the defendant respondent in lieu of Rs. 7,000 advanced in cash by the plaintiff. The interest stipulated in the promissory note was at the rate of 30 per cent. per annum.

The only defence which it is necessary to take notice of for the purpose of the appeal has reference to the high rate of interest. The defendant pleaded that the rate of interest agreed on was excessive and that it was a fit case in which the court should reduce it to a reasonable rate. The lower court has decreed the suit, except so far that the interest has been reduced from 30 per cent. to 24 per cent.

The plaintiff has appealed, claiming the interest at the contractual rate; while the defendant has preferred cross-objection praying for further reduction in the rate of interest. We have heard the learned counsel on both sides, and are clearly of opinion that no interference is called for.

It has been argued by the learned advocate for the plaintiff appellant that section 79 of the Negotiable Instruments Act is mandatory and that a court has no power to reduce the rate of interest entered in a promissory note. We are unable to accede to this contention. The Negotiable Instruments Act must be

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read with other enactments passed subsequent thereto. If under the Usurious Loans Act, which was passed after the Negotiable Instruments Act but before the promissory note in question was executed, the court has a discretion to reduce interest in a proper case, there is nothing in section 79 of the Negotiable Instruments Act which excludes such a discretion. The Usurious Loans Act, section 2(3), is applicable to all suits for the recovery of loans advanced after the commencement of that Act. It is quite general and includes not only suits based on bonds but also on negotiable instruments. We are clearly of opinion that section 79 does not exclude the jurisdiction of the court conferred on it by the Usurious Loans Act.

The lower court has found that 30 per cent. simple interest agreed to by the defendant was unreasonable in the circumstances in which the parties were at the time the loan was advanced. Nothing has been shown to us to justify a view contrary to that of the court below in that respect. The rate of interest which has been allowed by the court is *prima facie* reasonable. We hold that the appeal and the cross-objection should both be dismissed. Accordingly the decree appealed from is upheld. The appeal and the cross-objection are dismissed with costs.

REVISIONAL CIVIL.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice and Mr. Justice Niamat-ullah.

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April. 1.

PURAN LAL AND OTHERS (PLAINTIFFS) v. RUP CHAND
AND OTHERS (DEFENDANTS)*

Arbitration—Civil Procedure Code, schedule II, paragraph 5—Appointment of arbitrator by court in contravention of prescribed procedure—Revision—Civil Procedure Code, section 115—"Case decided"—Ground of revision.

A suit having been referred to arbitration, the nominated arbitrators either refused or neglected to act. In course