(1875) 05 CAL CK 0002

Calcutta High Court

Case No: None

Kylas Chunder Pal Chowdhry and Others		APPELLANT
	Vs	
Deen Doyal Poramanick		RESPONDENT

Date of Decision: May 19, 1875

Citation: (1876) ILR (Cal) 92

Hon'ble Judges: McDonell, J; L.S. Jackson, J

Bench: Division Bench

Judgement

L.S. Jackson, J.

The two questions raised in this appeal, which are of most importance, are, first, whether compound interest stipulated by the instrument on which the plaintiffs sue will run beyond the due date, which is the end of Choitro 1275; and secondly, whether, with reference to the Hindu law, the plaintiffs and the defendant being both Hindus, a larger amount of interest than the principal can be recovered. As to the first question, we can have no doubt, I think, that the terms of the bond appear clearly to import that there was to be payment of interest in two instalments,--viz., a half-yearly and yearly payment, the word including not only the particular year which was to elapse before the amount was due, but each year until the whole sum was recovered. As to the second point, no authority has been laid before us to justify our adoption for Courts in the mofussil, of the rule of Hindu law that more interest than the principal could not be recovered. We are referred to a decision of the Bombay High Court in Khushalchand Lalchand v. Ibrahim Fakir 3 Bom. H.C. Rep. A.C. 23 but the decision of the Bombay Court appears to have been based upon a legislative enactment in force in Bombay, to the effect that the Courts in that Presidency were, in the absence of any specific Act of Parliament or legislation, to apply the usage of the country, and in the absence of such usage the law of the defendant. In the Presidency town here, no doubt, it has been held that the rule of Hindu law in question has not been abrogated by Act XXVIII of 1855, and that the Supreme Court was, and the High Court is, bound in its original jurisdiction to administer the Hindu law in

matters of such contract; but in the case before us the provisions of Act VI of 1871, contained in Section 24, [1] are applicable. According to that section, the rules of Mahomedan and Hindu law are to be administered to parties Mahomedans and Hindus respectively, only in matters of succession, inheritance, marriage, or caste, or any religious usage or institution. We think, therefore, that there was nothing to prevent the Court below from awarding the amount of interest which is in conformity with the contract between the parties, nor that there is anything to show that the defendant had not entered into this contract with his eyes open, or that there is any equitable ground on which this Court should interfere. The appeal is dismissed with costs.

1.

[Section 24: Where in any suit or proceeding it is necessar any Court under this Act to decide any questio regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Mahomedan law in oases where the parties are Mahomedans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision; except in so far as such law has, by legislati been altered or abolished.]

Certain decisions to be according to Native law