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Commerce he must be held to be bound by the rules of that Chamber.

MOOKERJEE J. I agree with the Chief Justice.

Appeal allowed.

Attorneys for the appellant: *Manuel & Agarwallah.*

Attorneys for the respondents: *Pugh & Co.*

W. M. C.

APPELLATE CIVIL.

Before Mookerjee and Beachcroft JJ.

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Aug. 4.

PROKASH CHANDRA GHOSE

v.

HASAN BANU BIBI.*

Mortgage—Interest—Loss of part of security by acquisition of mortgaged land—Mortgagee applying to Land-Acquisition Judge for return of mortgage money (out of the compensation money) within term, whether entitled to interest for the whole term—Land Acquisition Act (I of 1894) ss. 18, 30.

If the mortgagee makes a demand for payment within the term, and the mortgagor complies, the mortgagee cannot insist upon payment of interest for the whole of the term.

Letts v. Hutchins (1), *In re Moss* (2), *Smith v. Smith* (3) referred to.

Where the mortgagee has given notice requiring payment within the term, he cannot withdraw it without the consent of the mortgagor.

Santley v. Wilde (4) followed.

* Appeal from Original Decree, No. 210 of 1913, against the decree of H. P. Duval, District Judge of 24-Parganas, dated April 26, 1913.

(1) (1871) L. R. 13 Eq. 176.

(3) [1891] 3 Ch. 550.

(2) (1885) 31 Ch. D. 90.

(4) [1899] 1 Ch. 747; 2 Ch. 474.

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Where the mortgagor agreed to keep the money for one year from 28th September 1912 on condition that the land should remain as security for the loan during the term, but one of the properties given as security had been acquired (the mortgagee probably having no knowledge thereof), and on the 11th October 1912 the mortgagor applied to the Land-Acquisition Deputy Collector that the money due under the mortgage (including one full year's interest) might be paid to him out of the compensation money, and the mortgagor consented :

Held, that, as the contract between the parties could not be performed according to its letter by reason of circumstances beyond their control, the mortgagor was not bound to pay interest beyond the period of one month (as admitted by him).

Bakhtawar Begam v. Husaini Khanum (1) explained.

APPEAL by the mortgagee, Prokash Chandra Ghose (petitioner), against an award in an apportionment case under the Land Acquisition Act.

On the 28th September 1912, one Hasan Bann Bibi mortgaged four properties in Calcutta (including her demarcated and partitioned share in premises No. 16, Muhammad Crescent 2nd Lane) to one Prokash Chunder Ghose for Rs. 5,000 interest being payable monthly at the rate of 12 per cent. per annum, the mortgage in consequence not being redeemable till 28th September 1913. The statutory declaration for the acquisition of premises No. 16, Muhammad Crescent 2nd Lane, had been published on the 28th February 1912 and the award of the Collector was made on the 20th September 1912, and apparently the mortgagee had no knowledge of these proceedings under the Land Acquisition Act. On the 14th October 1912, the mortgagee applied to the Land Acquisition Deputy Collector for payment to him (out of the compensation money) of Rs. 5,000 as principal together with Rs. 600 as interest thereon for one year, the mortgagee thus wanting a return of the mortgagee money within the first month only, together with interest for the full term of one

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year. The mortgagor consented to the repayment of the principal amount but objected to the payment of one whole year's interest as, within one month of the mortgage and of the award, the mortgagee had prevented the mortgagor from enjoying the Rs. 5,000 by pressing the Land-Acquisition Deputy Collector to stop payment to her of this sum. In fact the latter stopped payment to the mortgagor of the whole Rs. 5,600 out of the compensation money. No objection was taken by either of the parties as to whether this question regarding the payment of interest for the whole term stipulated could be considered in the course of the land acquisition proceeding. On 13th January 1913 the Land-Acquisition Deputy Collector referred this dispute (as to apportionment of compensation) to the Court. In his judgment dated 23rd April 1913, Mr. H. P. Duval, the Special Land Acquisition Judge, held that the mortgagee was in equity entitled to only one month's interest or Rs. 5,058 only out of the sum in deposit, as he could have called upon the mortgagor to give additional security under section 68 of the Transfer of Property Act, but preferred to follow the money in the Land Acquisition Court and thus realise his dues (with the consent of the mortgagor) before the time fixed.

Hence the mortgagee preferred this appeal to the High Court claiming an additional sum of Rs. 550 as interest for the remaining eleven months.

Babu Baidya Nath Dutt (with him *Babu Tarakeswar Pal Chowdhury*, *Babu Mohini Nath Bose*, and *Babu Bhupendra K. Ghose*), for the appellant. The mortgage having been for a term of one year ending on 28th September 1913, the acquisition (within the term) of the land given as part security gives rise to no equity which supersedes the covenant to pay interest up to that date. Under the mortgage contract, the mortgagee is entitled to interest for a whole year and the

mortgagor is bound to pay that sum even though the mortgage money is repaid on an earlier date: *Bakhtawar Begam v. Husaini Khanum* (1). Further, I rely on the provisions of sections 108 and 114 of the Land Clauses Act, 1845, which relate to the acquisition of mortgaged properties in England.

Babu Probodh Chandra Chatterjee, for the respondent. The appellant gave me the use of his money for one year and I, therefore, agreed to pay him interest for that period, but as he has subsequently deprived me of its use by wanting the return of the mortgage money within the term, he is not entitled to interest for the full period of one year. *Bakhtawar Begam's Case* (1) is an authority only for the proposition that ordinarily, and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. Here the contract between the parties cannot be performed according to its letter, as the land has been acquired, and the mortgagee has thus lost a part of his security, and though he could have applied for additional security under section 68 of the Transfer of Property Act, he immediately applied to the Land-Acquisition Collector for the withdrawal of the money. So he is not entitled either by law or in equity to more than one month's interest.

Babu Baidya Nath Dutt, in reply.

MOOKERJEE AND BEACHCROFT JJ. This appeal is directed against an award in an apportionment case under the Land Acquisition Act. The facts necessary for the decision of the question of law raised before us may be briefly stated.

On the 28th September 1912, the appellant advanced

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Rs. 5,000 to the respondent on mortgage of four properties in Calcutta. The mortgage money was repayable on the 28th September 1913, and carried interest at 12 per cent. per annum. One of the properties given by way of security was the subject matter of a proceeding under the Land Acquisition Act. The statutory declaration for the acquisition of the land had been published on the 2nd February 1912 and the award of the Collector made on the 20th September 1912. The record does not show whether the mortgagee was, at the time when he accepted the security, aware of the proceedings under the Land Acquisition Act; it is probable that he had no knowledge thereof, and the case has been tried on that assumption. On the 14th October 1912, the mortgagee applied to the Land-Acquisition Judge that the money due under his mortgage, namely, Rs. 5,000 as principal and Rs. 600 as interest thereon for one year, might be paid to him out of the compensation money. The mortgagee in substance wanted a return of the mortgage money together with interest for the full period of one year. The mortgagor did not contest the claim for the principal amount, but urged that she was not liable to pay interest for one year. It is needless to consider whether this question could have been considered in the course of the land acquisition proceeding; for no objection was taken by either of the parties, and, it is in the interest of both, that the question in controversy between them should now be finally settled. The Land Acquisition Judge has held that the mortgagee was entitled to interest only for one month, and has accordingly ordered the payment of Rs. 5,050 to him. The mortgagee is not satisfied and has appealed to this Court with a view to obtain an additional sum of Rs. 550 as interest for eleven months on the loan.

On behalf of the appellant it has been argued that, under the mortgage contract, he was entitled to interest for one year and that the mortgagor is bound to pay that sum even though the mortgage money is repaid on an earlier date. In support of this contention, reliance has been placed upon the decision of the Judicial Committee in the case *Bakhtawar Begum v. Husaini Khanum* (1). That case, however, is an authority only for the proposition that, ordinarily and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. This principle is of no assistance to the appellant. It need not be disputed that the mortgagor is not entitled to redeem before the debt becomes due; and it was held in *Brown v. Cole* (2) that he is not entitled to redeem before the debt becomes due, even though he may offer to pay interest for the whole period: see also *Burrough v. Cranston* (3). But in the case before us, the contract between the parties cannot be performed according to its letter, by reason of circumstances beyond the control of the parties. No doubt, the mortgagor agreed to keep the money for one year: but that was on condition that the land should remain security for the loan during the term. The land, however, has been acquired and the mortgagee has lost a part of his security. As soon as this happened, the mortgagee applied for return of the mortgage money. The question consequently arises whether he is entitled to interest thereon for the whole of the term. We are clearly of opinion that the claim is unjust.

It is well settled that if the mortgagee makes a

(1) (1914) I. L. R. 36 All. 195. (2) (1845) 14 Simon 427.

(3) (1840) 2 Ir. Eq. R. 203.

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demand for payment within the term, and the mortgagor complies, the mortgagee cannot insist upon payment of interest for the whole of the term. Reference may, in this connection, be made to the cases of *Letts v. Hutchins* (1), *In re Moss* (2), and *Smith v. Smith* (3). Indeed, where the mortgagee has given notice requiring payment within the term, he cannot withdraw it without the consent of the mortgagor: *Santley v. Wilde* (4).

In the present case, the mortgagee might have called upon the mortgagor, under section 68 of the Transfer of Property Act, to give additional security. He did not adopt that course and claimed a refund of the money, to which the mortgagor consented. Under these circumstances, it is plain that the mortgagor was not bound to pay interest beyond the period of one month. Reliance has finally been placed upon the provisions of sections 108 and 114 of the Land Clauses Act, 1845, relating to the acquisition of mortgaged properties. It is sufficient to observe that the Indian Legislature has not framed similar provisions applicable to this country.

The result is that the decree of the Court below is affirmed and this appeal dismissed with costs.

G. S.

Appeal dismissed.

(1) (1871) L. R. 13 Eq. 176.

(3) [1891] 3 Ch. 550.

(2) (1885) 31 Ch. D. 90.

(4) [1899] 1 Ch. 747 ; 2 Ch. 474.