APPELLATE CIVIL.

Before Mukerji and Guha JJ.

1931

July 13, 16.

BATAKRISHNA PRAMANIK

v.

BHAWANIPUR BANKING CORPORATION, LTD.*

Ratification—Implied agreement—Acquiescence—Knowledge—Belief—Bank-pass-book—Entries—Stated and settled account—Estoppel.

Where the customer is a man of business and well conversant with dealings of banks and bank rates of interest and used to intelligently examine the entries in his pass book and dispute or call for explanations as regards entries, which to him seemed open to exception, and the entries would at once show that compound interest at monthly rests was being charged and debited, though the rates of interest charged were not stated in the entries,

held that, from circumstances such as these, it would not be unreasonable to contend that means of knowledge was equivalent to knowledge or reasonable grounds of belief so as to fix the customer with adoption or ratification of the rate of interest that was being charged.

M'Kenzie v. *British Linen Company* (1) and *Jacobs* v. *Morris* (2) referred to.

Held, further, that, from continued and persistent acquiescence of this character, the existence of an agreement may be presumed.

Lord Clancarty v. *Latouche* (3), *Spencer* v. *Wakefield* (4) and *Mosse* v. *Salt* (5) referred to.

Quœre. Whether the return of a bank's pass book without comment constitutes a stated and settled account and operates as an estoppel precluding the customer from disputing the entries therein to the prejudice of the bank.

FIRST APPEAL by the defendant.

The facts of the case, as well as the arguments advanced at the hearing thereof, appear fully from the judgment.

H. D. Bose, *Charuchandra Biswas* for *Beereshwar Bagchi* and *Satyendranath Mitra* for the appellant.

Kshettramohan Ghosh and *Mahendrakumar Ghosh* for the respondents.

*Appeal from Original Decree, No. 231 of 1929, against the decree of R. R. Mukherji, Subordinate Judge of 24-Parganas, dated Aug. 10, 1929.

(1) (1881) 6 App. Cas. 82.
(2) [1902] 1 Ch. 816.
(3) (1810) 1 Ball & Beatty 420.
(4) (1887) 4 T. L. R. (N. S.) 194.
(5) (1863) 32 Beav. 269 ; 55 E. R. 106.

MUKERJI AND GUHA JJ. This is an appeal by the defendant from a decision of the Additional Subordinate Judge at Alipur, decreeing the plaintiffs' suit for recovery of money due on an overdraft account. The plaintiffs are a banking corporation, and the defendant is a customer of theirs, who had transactions with them ever since 1914.

There is no controversy between the parties as regards the advances which were made. The plaintiffs' claim as regards interest rests upon: *1st*, an agreement to pay compound interest on overdrafts with monthly rests at 1 per cent. per mensem above the Bengal Bank rate, subject to an enhancement of 2 per cent. per mensem on resolution being passed by the plaintiffs to that effect and with a minimum of 7 per cent. per annum; and *2nd*, on a resolution passed by the plaintiffs in December, 1920, enhancing the said rate of interest to that effect to take effect from the 1st January, 1921. The plaintiffs had a further claim for realising their dues upon the basis of an alleged collateral security by deposit of title deeds, but that claim has been overruled by the court below and need not be referred to any further.

The plaintiffs' claim, which has been allowed by the court below, was resisted by the defendant upon three grounds, *viz.*, *1st*, that the claim was time-barred; *2nd*, that there was no such agreement as regards interest as was alleged; and *3rd*, that the resolution of December, 1920, was not brought to his notice and so was not operative against him. All these grounds have been overruled by the court below. The first and the third of these grounds were at first taken by Mr. H. D. Bose, who appeared before us on behalf of the appellant, but eventually he had to admit that they were not tenable in view of the materials on the record, which amply support the findings of the court below as regards those matters and he had to concede that those findings are unassailable. The contention that he has strongly pressed on us is the second of the aforesaid grounds.

1931

Batakrishna Pramanik v. Bhawanipur Banking Corporation, Ltd.

The direct evidence relating to the agreement consists of the testimony of P. W. 5, who is the secretary of the plaintiff bank since 1923 and was its manager from 1896 to 1917. He has said:

> Defendant entered into a verbal agreement with me at the time of beginning to take overdrafts. He agreed to pay us interest at 1 per cent. above bank rate with a minimum of 7 per cent. He has agreed to pay higher rates of interest, if enhanced by the board of directors. Interest for every month was to be added to the principal.

There was no contract in writing,—a somewhat extraordinary practice which obtained with the plaintiff bank at the time. According to this witness nobody else was present when the defendant entered into the agreement with him. Oral evidence of an incident of this nature, when the witness, by reason of his office in the bank, must have dealt with hundreds of customers of the type of the defendant, given nearly five years after the incident, must necessarily be unconvincing in the extreme. It is very likely that the witness spoke to this agreement, because he honestly thought that there must have been such an agreement, rather than that he actually remembered the particulars of this incident. There is evidence that overdrafts have been allowed to other customers on these terms, and the witness may have deposed to it because he thought that, unless there was such an agreement with the defendant, no overdraft would have been allowed to him. The evidence of P. W. 7, who was manager of the plaintiff bank from 1917 to 1924, does not carry the case any further, because, though he has said that there was such an agreement, it is evident that it was never entered into in his presence or to his personal knowledge.

If then the direct evidence, to which we have referred, were the only material, for proving the agreement, we would not have felt justified in holding that it was enough for the purpose. But there are other materials.

First of all, we have the fact that the written statement of the defendant, beyond professing to

deny the agreement as alleged on behalf of the plaintiff bank, has not set out what the terms were, on which he took the advances.

The defendant, in his evidence, has deposed as follows :

> I have made verbal agreement with Nagendra Babu (meaning P. W. 5) manager of the bank, at the house of Kalidas Babu (meaning Babu Kalidas Ray Chaudhuri, who is now dead). Nobody except Kalidas Babu was present there. There was no talk about the maximum or minimum rate of interest. The agreement was 1 per cent. per annum above the Bengal Bank rate of interest. It changes frequently. There was no talk about compound interest. There was no talk that compound interest with monthly rests was charged from other debtors and that I would also have to pay it.

It is curious that this case, as to the agreement having been arrived at at Kalidas Babu's house or as to its terms, was not put to P. W. 5, at all. We are unable to rely on this version.

Then there is the evidence, afforded by the acknowledgment, Ex. 7, dated the 25th August, 1924, which shows that the defendant admitted his liability as calculated on the basis of the agreement alleged on behalf of the plaintiffs. The rate of interest is not mentioned in this admission, but the amount that he has admitted as due from him can only be arrived at on such a basis. Moreover, it would appear from the pass books, which the defendant from time to time produced before the plaintiff bank to get his accounts entered therein, that interest on overdraft advances was charged monthly at the end of every month and the total thus made up was carried on to the next month and treated as the total advance on which interest was thenceforward to run. The abstract question whether the return of the pass book without comment constitutes a stated and settled account and operates as an estoppel precluding the customer from disputing the entries therein to the prejudice of the bank, on which there is a conflict of judicial authority, need not be considered in the present case. The defendant is a man of business and appears upon the evidence to be well conversant with dealings of banks and bank rates of interest. Here, there is clear evidence that the defendant used to

1931

Batakrishna Pramanik v. *Bhawanipur Banking Corporation, Ltd.*

intelligently examine the entries in his pass book and to dispute or call for explanations as regards entries, which to him seemed open to exception [*vide* Ex. 3z (7), Ex. 3z (45) and Ex. 3z (46)]. It is quite true that the rates of interest charged were not stated in the entries, but the entries would at once show that compound interest at monthly rests was being charged and debited—a fact, which goes a long way to support the plaintiffs' case as to the agreement and completely demolishes the case of the defendant on that point. From circumstances such as these it would not be unreasonable to contend that means of knowledge was equivalent to knowledge or reasonable grounds of belief so as to fix the defendant with adoption or ratification of the rate of interest that was being charged [*M'Kenzie* v. *British Linen Company* (1), *Jacobs* v. *Morris* (2)]. And, from continued and persistent acquiescence of this character, the existence of an agreement may be presumed [*Lord Clancarty* v. *Latouche* (3), *Spencer* v. *Wakefield* (4), *Mosse* v. *Salt* (5)].

We are of opinion, therefore, that the agreement set up on behalf of the plaintiff bank must be held to have been in existence. The appeal, accordingly, fails and must be dismissed with costs.

Appeal dismissed.

G. S.

(1) (1881) 6 App. Cas. 82, 92.
(2) [1902] 1 Ch. 816, 830, 831.
(3) (1810) 1 Ball & Beatty 420, 429.
(4) (1887) 4 T. L. R. (N. S.) 194.
(5) (1863) 32 Beav. 269 ; 55 E. R. 106.