

## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Brandt.*

JAGANÁDHAM (PLAINTIFF), APPELLANT,

and

RAGUNÁDHA AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Contract—Instalment bond—Agreement to pay enhanced rate of interest on default,  
enforceable.*

An agreement to pay the principal of a debt by instalments with interest, and on default of payment of each instalment to pay an enhanced rate of interest thereon from the date of default of payment, is not an agreement which should be relieved against.

*Dictum of Wilson, J., in Mackintosh v. Crow (I.L.R., 9 Cal., 689) approved.*

APPEAL from the decree of E. C. Johnson, Acting District Judge of Vizagapatam, in suit No. 18 of 1884.

[The plaintiff, Thakum Jaganádhama, sued the defendants (1) Ragunádhama Panda and (2) Bálámukunda Panda to recover Rs. 3,798-15-6, principal and interest on a registered bond, dated 30th April 1878, executed by defendant No. 1.

Defendant No. 2 was sued as the undivided brother of defendant No. 1.

The District Judge held that the debt was bindi. Defendant No. 2 and decreed payment of the principal sum and interest at 9 per cent. to date of decree, and at 6 per cent. from date of decree to date of payment.

Against this decree plaintiff appealed on the ground that he was entitled by the terms of the bond to interest at 9 per cent. to the date when the first instalment of the bond became due (11th October 1878), and to interest at 24 per cent. from date of default till date of decree.

The bond, after reciting a promise to pay Rs. 1,500, proceeded as follows:—

“I will pay interest for this at the rate of Rs.  $\frac{3}{4}$  per 100 per month; the fixed instalments are as follow:—the whole of interest

accruing and Rs. 500 for the principal on the 15th Asvayuja Suddha of this year; the whole of interest accruing and Rs. 500 for the principal on the 15th Asvayuja Suddha of the year Pramādi; and the interest accruing and Rs. 500 for the principal on the 15th Asvayuja Suddha of the year Vikrama; I will pay the said three instalments in that manner, and get the payments entered on the back of this. In case of the amount of any one of the said instalments not being paid on the day of the instalment, the whole amount that may be due up to that time will be paid by me immediately in a lump with interest at the rate of Rs. 2 per cent. per month, without having anything do with the subsequent instalments.”

Mr. *Branson* for appellant.

Mr. *Mitchell* for respondents.

The Court (Collins, C.J., and Brandt, J.) delivered the following

JUDGMENT:—Bonds providing for repayment of loans by instalments with condition that on failure to pay any one instalment the principal sum due on date of default so made shall be forthwith exigible, with interest at a rate or rates specified, are so common that at first we were inclined to think that the District Judge had hardly sufficient grounds for saying that the terms of the bond in this case are unintelligible. Our first impression was that not only was it here intended that the principal sum with interest thereon at an enhanced rate should be payable on default of payment of the first or any subsequent instalment, but that the language of the bond would fairly and naturally bear that construction. But it does not necessarily do so, and though we are still inclined to think that the intention may have been, as above indicated, the constructions which it is possible to put on the words are so various, the language so ambiguous that we cannot say the District Judge was wrong in refusing to hold that under the bond the principal sum, Rs. 1,500, was payable, with interest thereon at 24 per cent. per annum, on and from the 11th October 1878, and this is all that we are directly called upon to decide in this appeal.

Whatever other construction may be placed on the disputed passage in the bond, there is nothing in our opinion which can be held as indicating that the increased rate of interest is payable from the date of the contract, and we concur in the view taken by

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Wilson, J., in *Mackintosh v. Crow* (1) in respect of contracts of loan where the condition is that "if the money be not paid at due date it shall *thenceforth* carry interest at an enhanced rate," that it is open to a debtor "to contract to pay no interest at present, but interest hereafter; or to pay one rate of interest now and a higher or lower rate hereafter."

But in the present case it cannot, in our opinion, be held with sufficient certainty that the agreement in this case was that the principal sum with interest at the higher rate became forthwith payable on the 11th October 1878; and in the circumstances we are not prepared to say that the Judge was not justified in giving decree for the principal sum with interest thereon at 9 per cent. from the date of the loan.

The terms of the bond might perhaps be most properly taken to be that on and after default in payment of the sum of Rs. 500 on the 11th October 1878, together with interest on that sum at 9 per cent. from the date of the bond, viz., the 30th April 1878, that sum, principal and interest, was payable with interest thereon at 2 per cent. per mensem until date of payment; that on like default in October 1879 the second instalment of Rs. 500 with interest thereon at 9 per cent. was payable with interest thereon at the enhanced rate from that date, and so in respect of the third and last instalment: and we are of opinion that an agreement to this effect should not be relieved against.

But we do not consider that we are called upon to give effect to a construction of the terms of the bond which is at best doubtful and which was not put forward on behalf of the appellant, when the appeal cannot be allowed on the ground on which it was preferred and argued.

We shall then dismiss this appeal with costs.

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(1) I.L.R., 9 Cal., 689.

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