

## APPELLATE CIVIL.

Before Sir, Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Muttusami Ayyar.

RAMACHANDRA (PLAINTIFF), APPELLANT,

1888.  
July 24.

vs.

DEVU (DEFENDANT), RESPONDENT.\*

*Civil Procedure Code, s. 209—Stipulated interest—Interest after filing plaint.*

A creditor having stipulated for interest at a certain rate is entitled to a decree for interest at that rate up to the date of decree. *Manghiram Marwari v. Dhowtal Roy* (I.L.R., 12 Cal., 569), dissented from.

APPEAL against the decree of M. R. Weld, Acting District Judge of Ganjam, in original suit No. 20 of 1887.

Suit to recover from defendant the sum of Rs. 7,958-14-10, being the principal and compound interest due on a registered bond, dated 24th June 1881, and also principal and interest due on footing of a document described as a receipt, dated 31st August 1886, with interest up to realization of the amount. The stipulated interest was in each case 21 per cent. per annum; the sums due were agreed to be repaid on 4th March 1882 and 23rd October 1886 respectively.

The defendant admitted the claim, but “ requested, in consideration of his involved circumstances, that, the interest may be reduced ” and also asked for a decree by instalments.

The District Judge said :—“ I will only give one per cent. per annum from this date, as the interest previously charged is so enormous, nor will I give costs. Decree for the amount of Rs. 7,958-14-10 to be paid in four half-yearly instalments with interest at one per cent. per annum. Interest in case of default to be one per cent. per annum. Each party to bear their own costs.”

The plaintiff preferred this appeal “ against that portion of the decree which disallowed the plaintiff the costs of the suit and interest on the amount sued for from the date of the plaint to the date of the decree.”

\* Appeal No. 102 of 1888.

RAMA-  
CHANDRA  
v.  
DEVU.

*Sundara Rau* for appellant.

The interest was not in the nature of a penalty *Tejpal v. Kesri Singh*(1), and the plaintiff is entitled to interest as the agreed rate up to the date of decree—*Bandaru Swami Naidu v. Atchayamma*(2), and see Civil Procedure Code, section 209. The District Judge should also have given plaintiff the costs of the suit. *Carvalho v. Nurbibi*(3).

[The Chief Justice referred to *Orde v. Skinner*(4).]

*Ethiraja Mudaliar* for respondent.

The case is within the rule of the Full Bench at Calcutta in *Mangniram Marwari v. Dhowtal Roy*(5), in which *Orde v. Skinner*(4) is distinguished.

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

JUDGMENT.—We think the plaintiff is entitled to interest at the rate stipulated, viz., 21 per cent. to the date of decree. See *Bandaru Swami Naidu v. Atchayamma*(2), and *Orde v. Skinner*(4). It is true that a Full Bench of the Calcutta Court has decided to the contrary—see *Mangniram Marwari v. Dhowtal Roy*(5), but with great respect to that Court we are not inclined to follow their ruling in opposition to the case of *Bandaru Swami Naidu v. Atchayamma*(2) and also with reference to the remarks of the Privy Council in *Orde v. Skinner*(4). We therefore direct the decree to be amended by allowing interest at the rate of 21 per cent. from the date of the plaint to the date of decree.

With regard to the question of costs, we decline to interfere with the discretion of the District Judge, and as the appeal partly fails, we direct each party to bear their own costs of this appeal.

(1) I.L.R., 2 All., 621.

(3) I.L.R., 3 Bom., 202.

(5) I.L.R., 12 Cal., 569.

(2) I.L.R., 3 Mad., 125.

(4) I.L.R., 3 All., 107.