

ORIGINAL CIVIL.

—
Before Mr. Justice Pontifex.

AUHINDRO BHOOSUN CHATTERJEE v. CHUNNOOLOLL,
 JOHURRY AND ANOTHER.

1879
 May 22.

Mortgage—Suit by Second Mortgagee against Mortgagor and Third Mortgagee—Account.

In a suit by a second mortgagee against his mortgagor and a third mortgagee, asking for an account and sale,—the Court directed an account to be taken, not only of what was due to the plaintiff, but also of what was due to the third mortgagee.

THIS was a suit by a second mortgagee against the mortgagor and a third mortgagee. It appeared that on the 23rd September 1878, the defendant Chunnoololl Johurry mortgaged certain properties in Calcutta to the plaintiff to secure the repayment of the sum of Rs. 4,000. These properties were, at the time of the mortgage to the plaintiff, under mortgage to one Bolai Doss Mullick, who had then obtained a decree for an account and sale, and the mortgage to the plaintiff was subject to the mortgage in favor of Bolai Doss Mullick, who had not, however, at the time of the institution of the present suit, proceeded to sell the properties, and the plaintiff stated that he had no desire to redeem them from him. After the mortgage to the plaintiff, the defendant Chunnoololl Johurry again mortgaged the properties in question to the defendant Protab Chand Mullick. The plaintiff in the present suit asked for an account and sale of the mortgaged properties if not sold at the instance of Bolai Doss Mullick, and that if they had been sold, then that the plaintiff might be paid out of the surplus.

Mr. *N. Haldar* for the plaintiff.

Mr. *C. C. Dutt* for the defendant Protab Chand Mullick.

The defendant Chunnoololl Johurry did not appear.

PONTIFEX, J. (made the following decree):—Decree for an account of principal and interest due on the mortgage to the

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plaintiff, in default of payment the property to be sold and plaintiff to be paid first, after satisfaction of the decree of Bolai Doss Mullick if there is then a surplus, account to be taken of what is due to Protab Chund Mullick, and surplus to be applied for payment of his claim. If property has been sold under previous decree, claims to be satisfied out of surplus.

Attorneys for the plaintiff: Messrs. *Remfrey and Rogers*.

Attorneys for the defendant Protab Chund Mullick: Messrs. *Ghose and Bose*.

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice McDonell.

1879
 April 9.

JOHOORY LALL (PLAINTIFF) v. BULLAB LALL (DEFENDANT).*

Interest on Arrears of Rent.

Every arrear of rent, unless it is otherwise provided by an agreement in writing, is liable to bear interest at 12 per cent. from the time when it, or each instalment of it, became due. The discretion which a Court has to refuse interest can only be exercised upon very clear grounds. The mere non-enforcement by a landlord, even for a series of years, of his right to interest upon arrears of rent, does not amount to a waiver of such right.

Baboo Bussant Coomar Bose for the appellant.

Baboo Anund Chunder Bannerjee for the respondent.

THE facts of this case sufficiently appear from the judgment, which was delivered by

JACKSON, J. (MCDONELL, J., concurring).—The plaintiff sued to recover arrears of rent with interest.

* Appeal from Appellate Decree, No. 1398 of 1878, against the decree of Baboo Sreenath Roy Bahadoor, Subordinate Judge of Hooghly, dated the 26th April 1878, affirming the decree of Baboo Ashootosh Addy, Munsif of Haripal, dated the 29th September 1877.