APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

KAMALAMMAL (PLAINTIFF No. 1), APPELLANT,

v.

PEERU MEERA LEVVAI ROWTHEN (DEFENDANT), RESPONDENT.*

1897. March 31. April 28.

Contract Act—Act IX of 1872, s. 73—Interest—Suit for money payable under an oral contract.

The plaintiff sued to recover a sum of money due to her on an oral contract together with interest. No agreement or usage giving a right to interest was alleged, and no written demand and notice had been given under the Interest Act:

Held, that the plaintiff was not entitled to interest.

SECOND APPEAL against the decree of T. Ramasami Ayyangar, Subordinate Judge of Madura (West), in Appeal Suit No. 284 of 1895, modifying the decree of V. Kuppusami Ayyar, District Munsif of Tirumangalam, in Original Suit No. 415 of 1894.

Plaintiff sued to recover Rs. 1,478 on account of rent due by the defendant to her and interest thereon at 12 per cent. per annum. There was no agreement to pay interest and no notice that interest would be charged. The District Munsif passed a decree as prayed holding that the plaintiff was entitled to interest by way of damages.

The Subordinate Judge modified the decree by disallowing interest. The plaintiff preferred this second appeal.

Rangachariar for appellant.

Mr. *N. Subramanyam* for respondent.

JUDGMENT.—The question in this case is whether the first plaintiff, to whom a sum of money was payable under an oral contract, is entitled to interest prior to the date of the suit.

No agreement or usage giving a right to the interest was alleged, and it was admitted that no written demand giving notice that interest would be claimed, was sent under Act XXXII of 1839.

In these circumstances it must be held that the interest cannot be decreed.

* Second Appeal No. 267 of 1896.

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It will be seen from the judgments delivered in the Court of appeal and in the House of Lords in *London Chatham and Dover Railway Company* v. *South Eastern Railway Company*(1), that in England, at common law, interest was not recoverable as damages in cases similar to the present. That the law of this country must be taken to be substantially the same, was established by the decision of the Judicial Committee in *Juggo Mohun Ghose* v. *Kaisreechund*(2); and in *Kisara Rukkumma Rau* v. *Cripati Viyanna Dikshatulu*(3), Scotland, C. J., and Holloway, J., laid down broadly that, in the absence of a demand in writing, interest up to date of suit cannot be awarded upon sums which are not payable under a written instrument and of which payment has been illegally delayed. The learned Judges arrived at that conclusion in spite of the practice, which they admitted, had for a long series of years prevailed in the mofussil Courts of awarding interest upon all demands improperly withheld—a practice which the learned Judges felt bound to declare was unsupported by authority.

It was, however, contended for the first plaintiff that the law on the point has been otherwise, since the passing of the Contract Act and section 73 of the Act coupled with illustration (*a*) annexed thereto, was relied on. No doubt, the section applies to, and includes cases of, breach of contract to pay money. But to construe the section as giving a right to interest even in those cases, in which it could not be awarded according to the provisions of Act XXXII of 1839, would be to hold that the latter enactment was virtually repealed by the former. Now this is totally opposed to the maxim *generalia specialibus non derogant*. Referring to this principle, Bovill, C. J., observed in *The Queen* v. *Champneys*(4) "it "is a fundamental rule in the construction of statutes, that a "subsequent statute in general terms is not to be construed to "repeal a previous particular statute, unless there are express "words to indicate that such was the intention, or unless such an "intention appears by necessary implication." The reason for the presumption against a repeal by implication in these cases, as stated by Wood, V. C., is "in passing a special Act, the legislature "had their attention directed to the special case which the Act was

(1) 1893, App. Cas., 429.
(2) 9 M.I.A., 260.
(3) 1 M.H.C.R., 369.
(4) L.R., 6 C.P., 394.

"meant to meet, and considered and provided for all the circumstances of that special case; and, having done so, they are not "to be considered by a general enactment passed subsequently, "and making no mention of any such intention, to have intended "to derogate from that which, by their own special Act, they "had thus carefully supervised and regulated" (*Fitzgerald* v. *Champneys*(1)). In the present case, Act XXXII of 1839 is not one of the enactments specified in the schedule to the Contract Act as repealed, and there are no express words in section 73 indicating an intention to rescind the earlier Act. In fact, there is no real conflict between the two, since effect may well be given to section 73, by holding that the award of interest, as compensation contemplated by that section, has reference to cases in which such award can be made without infringing the provisions of the other Act. Still less can that Act be held to be in any way affected by the illustration relied on; inasmuch as an illustration has not the same operation as the sections which really form the enactment (*Nanak Ram.* v. *Mehin Lal*(2); and *Koylash Chunder Ghose* v. *Sonatun Chung Baroote*(3)). Even were it otherwise, it is obvious that the framers of the illustration were not considering under what conditions and limitations interest should be awardable in cases of breach of contract to pay money. They meant only to point out that, if in consequence of a breach of that kind, a man finds himself unable to pay his debts and is ruined; he cannot recover compensation for loss of that remote character; and the allusion to interest was made to show that that was the only legally recoverable compensation for the breach.

The appeal, therefore, fails and is dismissed with costs.

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(1) 30 L.J., Ch., 782. (2) I.L.R., 1 All., 487. (3) I.L.R., 7 Calc., 132.