Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

SURJYA NARAIN SINGH (DEFENDANT) *v.* SIRDHARY LALL (PLAINTIFF).*

1883 *March* 9.

Hindu Law, Contract—Debtor and Creditor—Damdupat—Principal and interest—Interest in excess of principal.

Since the passing of Act XXVIII of 1855, a Hindu creditor may claim from his Hindu debtor interest in excess of the principal sum lent, should such interest have accrued.

The rule of law prohibiting the recovery of interest in excess of the principal sum lent was in force in the Mofussil of Bengal not as a provision of Hindu law, but as a statutory rule introduced by Regulation XV of 1793, and embracing all persons contracting in the Mofussil.

THIS was a suit to recover the sum of Rs. 58,800, the amount of two mortgage bonds which had been executed by the defendants in favour of the plaintiff on the 8th June 1872 and the 31st of March 1873, respectively. The principal due on the first bond was Rs. 1,000, and the interest Rs. 1,308. The principal due on the second bond was Rs. 19,000, and the interest due on this bond was Rs. 37,492. Two questions arose on this appeal: (1), whether compound interest was chargeable under the term of the bonds; (2), whether interest greater in amount than the principal could be recovered. The Court below decided both these points in favour of the plaintiff, following, on the second point, the case of *Deen Dyal Paramanick* v. *Kylash Chunder Pal Chowdhry* (1), in preference to *Ramconnoy Andicary* v. *Johur Lall Dutt* (2). One of the defendants, a subsequent mortgagee, appealed, making the plaintiff alone the respondent.

The *Advocate-General* (Mr. *G. C. Paul*), Baboo *Mohesh Chunder Chowdhry* and Baboo *Taruck Nath Palit* for the appellant.

The Advocate-General.—The appellant is entitled to dispute the amount due on the plaintiff's mortgage—*Ram Chandra Mankeshwar* v. *Bhimrav Ravji* (3). The plaintiff cannot recover

* Appeal from Original Decree No. 103 of 1881, against the decree of Moulvi Hafiz Abdul Karim, First Subordinate Judge of Bhagulpore, dated the 11th February 1881.

(1) I. L. R., 1 Calc., 92; 24 W. R., 106.

(2) I. L. R., 5 Calc., 867.

(3) I. L. R., 1 Bom., 577.

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compound interest on his bond. At any rate he cannot recover more interest than the amount of his principal—*Ram Lal Mookerjee* v. *Haran Chandra Dhar* (1); *Mia Khan* v. *Bibi Bibijan* (2); *Omda Khanum* v. *Brojendro Coomar Roy Chowdhry* (3); *Ramconnoy Audicary* v. *Johur Lall Dutt* (4). This rule is a rule of Hindu law, Colebrooke, Bk. I, para 59; *Goverdhun Das* v. *Waris Ali* (5); and is still in force as it has not been abolished by legislative enactment, Act VI of 1871, s. 24.

Mr. *Evans* and Baboo *Doorga Mohun Das* for the respondent.

Mr. *Evans*.—The rule that interest was not to exceed the principal was a specific rule introduced by Regulation XV of 1793, and was rescinded by Act XXVIII of 1855—*Kalica Prosad Misser* v. *Gobind Chunder Sein* (6). It was not then introduced as a living custom of Hindu law, and, in fact, like other rules laid down by Menu, it has long been obsolete—*Ramalakshmi Ammal* v. *Sivanautha Perumal Sethurayar* (7); *Lulloobhoy Bappoobhoy* v. *Cassibai* (8). The Bombay Regulations were different—*Khushalchand Lalchand* v. *Ibrahim Fakir* (9). The Civil Courts' Act (VI of 1871) s. 24, does not apply. [The learned Counsel also referred to *Huromonee Gooptia* v. *Gobind Coomar Chowdhry* (10), and to *Madhub Chunder Poramanick* v. *Raj Coomar Doss* (11).]

The judgment of the Court (PRINSEP and O'KINEALY, JJ.) was delivered by

PRINSEP, J.—The questions raised in this appeal are, *first*, whether the bond marked "A," executed by Baboo Ram Gopal Singh to Baboo Sirdhary Lall, dated the 31st March 1873, entitles Baboo Sirdhary Lall to demand compound interest; and, *second*, whether under Hindu law plaintiff was entitled to recover arrears of interest to an amount greater than the principal. One portion of the bond runs as follows: "I, the declarant, * * * have borrowed from Baboo Sirdhary Lall, inhabitant and part proprietor

(1) 3 B. L. R., (O. C.), 130.
(2) 5 B. L. R., 500.
(3) 12 B. L. R., 451.
(4) I. L. R., 5 Calc., 867.
(5) 4 Sel. Rep., 261.
(6) Suth. S. C. C., 110: 2 W. R. S. C. C., 1.
(7) 14 Moore's I. A., 570: 12 B. L. R., 396.
(8) L. R., 7 I. A., 212: I. L. R., 5 Bom., 110.
(9) 3 Bom. H. C. R., (A. C.) 23.
(10) 5 W. R., 51.
(11) 14 B. L. R., 76.

of Maskin Masihuddinnuggur, pergunnah Bhagulpore, Rs. 19,000, bearing interest at the rate of one rupee five annas per cent per mensem from this day up to the date of repayment. Therefore I, the declarant, do hereby declare and state in writing that I shall pay the interest on the said sum every year, and the principal in one lump sum in Magh 1286, F. S.; that whatever amount will be paid for interest or principal, I, the declarant, shall have the same credited on the back of this bond, the plea of payment, under a separate receipt, or in any other way, shall be invalid; that I shall pay off the interest for each year after adjustment; that out of the amount paid in a year, at first the interest found due on adjustment of the account for the year shall be deducted, and if there remains any surplus, it shall be set off against the principal; that I, the declarant, shall not claim any interest on the amount thus paid; that I shall pay interest at the said rate until payment on the entire sum found to be due after adjustment of the account for a year."

We think that the interpretation of this document is that the accounts are to be made up at the end of each successive year, and that whatever remains due is treated as principal, and bears interest at the stipulated rate of one rupee five annas per cent per mensem, and that the contention of the appellant, that the plaintiff cannot claim compound interest under the bond, is untenable.

In regard to the second question it is necessary, in order to come to a correct conclusion, to enter into some details in respect of the law relating to usury in Lower Bengal. By Regulation XV of 1793, s. 6, it was declared that if the interest on any debt, calculating according to the rates allowed by the Regulation, should accumulate so as to exceed the principal, the Courts were not, except in certain specified cases, to decree a greater sum for interest than the amount of such principal. This was not declared to be a principle of Hindu law, applicable only to Hindus, but was a statutory provision embracing all persons contracting in the Mofussil. Nevertheless, it was the practice of the Courts to allow interest in excess of the principal where the interest had accumulated owing to reasons not ascribable in any degree to the laches of the creditor. In the case of *Jankee*

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Pershad v. *Maharajah Oodwunt Narain Singh* (1), it was decided that interest exceeding the principal could, in the case of Hindus, be granted if eht excess accrued *pendente lite*, and there is no fault attributable to the creditor. No custom or usage among Hindoos was asserted in that case. Subsequently in the case of *Goverdhun Dass* v. *Waris Ali* (2), interest exceeding the principal was granted. This was the state of the law and practice of the Courts until the supersession of Regulation XV of 1793 by Act XXVIII of 1855. By s. 2 of that Act it was declared that in any suit in which interest was recoverable the amount should be adjudged or decreed by the Court at the rate, if any, agreed upon by the parties, and if no rate should be agreed upon, at such rate as the Court should deem reasonable. Subsequent to the passing of this Act, in the case of *Kalica Prosad Misser* v. *Gobind Chunder Sein* (3), it was decided that the law under which the claim for accumulated interest was limited in amount to a sum not exceeding the principal had been rescinded by Act XXVIII of 1855. This was a case between Hindus. This decision was followed in the case of *Huromonee Gooptia* v. *Gobind Coomar Chowdhry* (4), and in the case of *Cmda Khanum* v. *Brojendro Coomar Roy Chowdhry* (5). It would thus appear that from the earliest times up to the year 1874 no claim for a reduction of interest has ever been allowed on the ground of Hindu law or usage, but on the contrary that this contention whenever raised has always been repudiated, and in several cases the Courts granted interest beyond the principal. In this respect the Courts in the province of Lower Bengal have been in no way singular. The very same point has been decided in conformity with this view in the North-Western Provinces to which the Bengal Regulations apply, and in Madras where the Regulation is of similar import.

In the case of *Annaji Rau* v. *Ragubai* alias *Sithabai* (6) the Court at Madras declared that in the matter of interest the Hindu law was not binding in the Mofussil. This

(1) 3 Sel. Rep., 270.
(2) 4 Sel. Rep., 261.
(3) Suth. S. C. C., 110: 2 W. R. S. C. C., 1.
(4) 5 W. R., 51.
(5) 12 B. L. R., 451.
(6) 6 Mad. H. C., 400.

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decision was followed in the case of *Kuar Lachman Singh* v. *Pirbhu Lall* (1). So that there is a complete consensus of opinion in Bengal, in the N. W. P., and in Madras, that since the passing of Act XXVIII of 1855, a Hindu may claim from another Hindu interest in excess of the principal. We do not refer to the cases decided in the Bombay Presidency, because, as appears from the case *of Khusalchand Lalchand* v. *Ibrahim Fakir* (2) the Regulations in that Presidency were different from those in Bengal and Madras. The learned Advocate-General, in support of his view that interest should not be allowed beyond the principal, has referred to the decision of Sir Barnes Peacock in the case of *Ram Lall Mookerjee* v. *Haran Chandra Dhar* (3), in which it was decided that within the town of Calcutta, interest as between Hindus, might not exceed the principal.

This decision, though doubted in the case of *Meah Khan* v. *Bibi Bibijan* (4) has been followed in a case lately decided in the Original Side of this Court, but this judgment is founded upon considerations special to the town of Calcutta, and has no application to the Mofussil.

We are, therefore, of opinion that there is a whole series of cases from the earliest times to show that in Bengal interest beyond the principal is demandable among Hindus, and the contention now raised by the learned Advocate-General cannot be sustained.

In this view, we dismiss the appeal with costs.

Appeal dismissed.

(1) 6 N. W. P. H. C., 358.
(2) 3 Bom. H. C. A. C., 23.
(3) 3 B. L. R., O. C., 130.
(4) 5 B. L. R., 500.