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given to an agreement, that if money is not paid at the due date it shall from that time bear an increased rate of interest—*Boolakee Lall* v. *Radha Singh* (1); *Mackintosh* v. *Wingrove* (2).

The former of these cases probably dealt with a document executed before the Contract Act; but however that may be such cases differ materially from the present. In them the agreement to pay an increased rate of interest from a future day may well be regarded as a substantive part of the contract, not as a penalty for its breach; but, where, as here, an increased rate of interest from the date of the bond is made payable on default, we cannot regard it in any other light than as a sum named in the contract to be paid in case of breach within the meaning of s. 74 of the Contract Act.

The appeal will be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Wilson and Mr. Justice Field.

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December 19.

RAM DAS (PLAINTIFF) *v.* BIRJNUNDUN DAS *alias* LALOO BABOO AND ANOTHER (DEFENDANTS.)*

Limitation (Act IX of 1871) *Sch. II, Art.* 148—*Suit for redemption of mortgage—Acknowledgment of title of mortgagor or of his right to redeem.*

An acknowledgment to be within the meaning of Art. 148, Sch. II, Act IX of 1871, must be an acknowledgment of a present existing title in the mortgagor.

An acknowledgment of the original making of the mortgage deed and of possession having been taken under it, coupled with the allegation of the subsequent execution of two other deeds practically superseding the mortgage and altering the relation of the parties, contained in a written statement filed previous to the expiry of the 60 years allowed, is not a sufficient acknowledgment within the meaning of that Article, so as to prevent limitation from operating.

IN this suit the plaintiff sought to redeem a mortgage of immovable property which was executed on July 15th, 1815. The

* Appeal from Appellate Decree No. 181 of 1882, against the decree of Baboo Kali Prosunno Mookerjee, Subordinate Judge of Sarun, dated the 21st November 1881, affirming the decree of Baboo Dinesh Chunder Roy, Munsiff of Chupra, dated the 6th July 1880.

(1) 22 W. R., 223.

(2) I. L. R., 4 Calc., 137.

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suit was instituted in December 18th, 1879, and the first Court dismissed the suit on the ground of limitation. That decree was confirmed on appeal by the lower Appellate Court, and the plaintiff now preferred a special appeal to the High Court. The plaintiff relied upon an acknowledgment made by the defendants in a written statement filed by them in a suit in the year 1872 as being sufficient to take the case out of the provisions of Art. 148, Sch. II of Act IX of 1871 (the Limitation Act), and the sole question argued was, whether that acknowledgment was sufficient to prevent the suit from being barred.

Baboo *Aubinash Chunder Banerjee* for the appellant.

Baboo *Taruck Nath Palit* for the respondents.

The judgment of the Court (WILSON and FIELD, JJ.) was delivered by

WILSON, J.—We entertain no doubt about this case, and we agree with the view taken by the Court below. The suit is a suit to redeem a mortgage, and the question is whether the suit is barred by limitation. There is no question that this depends upon the terms of the Limitation Act of 1871. Now, under Art. 148 of the second schedule to that Act, a suit must be brought within "sixty years from the date of the mortgage, unless where an acknowledgment of the title of the mortgagor or of his right of redemption has, before the expiration of the prescribed period, been made in writing, signed by the mortgagee, or some person claiming under him, and in such case, the date of the acknowledgment." In this case, the sixty years elapsed while the Act of 1871 was the governing Act, and the suit is therefore barred unless there is a sufficient acknowledgment to save it from the operation of limitation. The acknowledgment relied upon is contained in the written statement filed by the present defendants in August 1872, within sixty years from the making of the mortgage in the suit by the present plaintiff or those under whom he claims, and the acknowledgment runs in these words: "The land in dispute, according to the deed of zuripeshgi, dated 15th July 1815, for Rs. 425, executed by Ramrutton Das, devolved into the possession of Baboo Gokool Chund. Baboo Gokool Chund

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all along used to pay Rs. 2 as the right of the lessor. After the death of Ramrutton Das Gosain, Gopal Das, the *guddi nishin*, in consideration of Rs. 665 (including both) former and present (debts), executed a zuripeshgi deed, dated 21st October 1824, respecting the land under claim, as well as the garden named Khatri containing two beeghas of land, in favour of Baboo Gokool Chund an ancestor of the defendants. Subsequently he executed an ekrarnama, dated 11th August 1831, in lieu of the sum of Rs. 901 (by virtue of) which Baboo Gokool Chund till his lifetime was, and after his demise the defendants are, all along in possession of the same." Now that is an acknowledgment of the original making of the mortgage deed and of possession being taken under it, but the statement goes on to allege the execution subsequently of two other deeds, practically superseding the mortgage and altering the relation of the parties. Under the terms of Art. 148 we do not think that this is a sufficient acknowledgment to save the case from limitation. We think that "acknowledgment" in that Article means acknowledgment of a present existing title in the mortgagor.

We were referred to the decision in the case of *Daia Chand* v. *Sarfraz* (1) as an authority against this view of the case. The question there was, whether a certain record of right signed by the parties in question did or did not amount to an acknowledgment. The document was no doubt very scanty in its terms, and the case was relied on as shewing that we ought to interpret the Act very liberally in deciding what constitutes an acknowledgment; but the difference between the two cases is clear. In that case, there was an acknowledgment of a title existing at the time of the acknowledgment, which is not the case in the appeal now under consideration. At page 122 in the judgment of Justices Turner and Oldfield it is said: "The terms of the law, an acknowledgment of the mortgagor's title, or an acknowledgment of his right to redeem, were not, it may be presumed, intended to be mere tautology. An acknowledgment that a certain person, or his representative, is the proprietor of the estate is an acknowledgment of his title. An acknowledgment that the mortgage is a

(1) I. L. R., 1 All., 117.

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subsisting mortgage would be an acknowledgment of his right to redeem if he established his title." Those Judges, therefore, regard the acknowledgment required as an acknowledgment of an existing right to redeem, or of an existing title in the mortgagor. Neither of these are to be found in the present case.

We, therefore, agree with the Court below that this suit is barred, and dismiss the appeal with costs.

Appeal dismissed.

PRIVY COUNCIL.

MAHARAJAH OF BURDWAN (DEFENDANT) *v.* TARASUNDARI DEBI (PLAINTIFF.)

P. C.* 1882 *November* 23.

[On appeal from the High Court at Fort William in Bengal.]

Sale for arrears of rent—Regulation VIII of 1819, *s.* 8, *cl.* 2—*Proof of publication of notice before sale of patni taluk for arrears of rent.*

The due publication of the notices prescribed by Regulation VIII of 1819 s. 8, cl. 2, forms an essential part of the foundation on which the summary power to sell a patni taluk for non-payment of rent is exercised by the zemindar, who, when instituting this proceeding, is exclusively responsible for such publication being regularly conducted.

Although objection to the form of the receipt, and the absence of the receipt itself, need not be regarded, if the fact of the due publication of the notices having been made is not a matter of controversy (as held in *Sona Beebee* v. *Lalchand Chowdhry* (1); yet where that fact was in doubt owing to the evidence of it not having been secured according to the provisions of the Regulation—a result due to the neglect of those representing the zemindar—the finding of the High Court that due publication had not been established by such proofs as were forthcoming, was maintained by the Judicial Committee.

APPEAL from a decree of the High Court (22nd March 1880) reversing a decree of the Judge of the District of East Burdwan (2nd May 1878).

The question raised on this appeal was whether or not before the sale of the respondent's patni taluk, for arrears of rent due

Present: LORD FITZGERALD, SIR B. PEACOCK, SIR R. COUCH, and SIR A. HOBHOUSE.

(1) 9 W. R., 242.