PRIVY COUNCIL.*

1921, March 1.

VENKATADRI APPA RAO AND OTHERS (DEFENDANTS),

v.

PARTHASARATHI APPA RAO (PLAINTIFF), RESPONDENT [ONE CROSS-APPEAL].

[On Appeal from the High Court of Judicature at Madras.]

Account—Restitution—Principal and interest—Appropriation of payments—Rate of interest—Discretion of High Court—Code of Civil Procedure (V of 1908), sec. 144.

Upon taking an account of principal and interest due, the ordinary rule as to payments by the debtor unappropriated either to principal or interest is that they are first to be applied to the discharge of interest.

A creditor under the belief that interest was payable with yearly rests, prepared a statement in which payments by the debtor were carried forward to the end of the year with interest, and the amounts so found were then credited against the total sum due. Upon the account being taken with simple interest,

Held, that the creditor had not by this statement appropriated the payments against the principal, so as to be precluded from applying the rule stated above.

The discretion of the High Court when making an order for restitution under section 144 of the Code of Civil Procedure, 1908, to fix the rate of interest payable will not be lightly interfered with. Where in the case of restitution of money paid out by a Receiver under a decree the Court ordered restitution to the opposite party with interest at a rate higher than the Bank rate, an appeal was dismissed.

CONSOLIDATED APPEAL and Cross-appeal (No. 40 of 1919) from a judgment and decree of the High Court (OLDFIELD and SESHAGIRI AYYAR, JJ.) (15th December 1916) varying a decree of the District Judge of Kistna at Masulipatam.

The Appeal and cross-appeal related to the amount of principal and interest which the defendants (appellants in the main Appeal) were entitled to recover from the plaintiff (respondent and cross-appellant) by way of restitution in respect of money paid out under a decree of the High Court which had been

* *Present*:—Lord BUCKMASTER, Lord DUNEDIN, Lord SHAW, Sir JOHN EDGE and Mr. AMEER ALI.

reversed by the Judicial Committee. The facts relevant to the Appeal and cross-appeal appear from the present judgment of the Judicial Committee.

De Gruyther, K.C., Dube, Narasimham, and *Palat* for the appellants.—The appellants did not, by the statement which they had prepared, appropriate the payments made to principal. There are no appropriations by either party. The ordinary rule applies that the payments should first be applied against the interest due: *Ramundoss Mookerjea* v. *Omeish Chunder Race*(1), *Maharaja of Benares* v. *Har Narain Singh*(2).

Sir Erle Richards, K.C., and *Parik,* for the respondent and cross-appellant.—When the respondent lost the Medur estate under the order of the Board he had assets to his credit in respect of the Nidadavolu estate. That being so, the ordinary rule as to the application of sums received could not properly be applied. Further, under section 144, of the Code of Civil Procedure, 1908, the High Court had a discretion in the matter, depending upon all the circumstances of the case. The Court was not bound by any rule: *Thompson* v. *Hudson*(3), *Bower* v. *Marris*(4). The cross-appeal is on two grounds: First, interest should have been charged against respondent only at the Bank rate, which was lower than 6 per cent. Section 144 is a restitution section; if the money had not been paid over to the respondent, it would not have earned in the Receiver's hands more than the Bank rate. Secondly, the trial Judge was right in holding that interest should run only against so much of the unpaid debt as represented principal.

The JUDGMENT of their Lordships was delivered by

Lord BUCKMASTER.

Lord BUCKMASTER.—Their Lordships do not desire to hear counsel for the appellants in reply, nor do they need further time to consider the advice that they will tender to His Majesty, for in their opinion this case is quite plain. It appears that in 1899 the respondent instituted a suit, the defendants to which are represented by the present appellants; he claimed partition of two estates, known as the Nidadavolu estate and the Medur estate, asserting that he was entitled to a one-third share in each. The

(1) (1856) 6 M.I.A., 289.
(2) (1905) I.L.R., 28 All., 25.
(3) (1870) L.R., 10 Eq., 497.
(4) (1841) 1 Cr. & Ph., 351.

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District Judge, by whom the action was first heard, decreed in the plaintiff's favour with regard to the first estate, but against him with regard to the other. An appeal was taken from that decree to the High Court who varied it by declaring that the plaintiff was entitled to one-third of the second estate as well as of the first. A Receiver having been appointed of the rents of both estates on the 14th February 1907, the plaintiff obtained an order enabling the Receiver to pay over to him his interest in the Medur estate under the judgment of the High Court as it then stood. Unfortunately for him the uncertainties of litigation resulted in a decree of His Majesty in Council on the 19th December 1913 restoring the judgment of the District Judge, and it consequently followed that the share of the property in the Medur estate which he had received from the Receiver was money which he was bound to restore. The representatives of the original defendants accordingly appealed to the District Court for restitution, asking for repayment out of the moneys in the Receiver's hands representing the plaintiff's share in the Nidadavolu estate, and against him personally for the balance. The matter came before the District Judge, who decided that the defendants were entitled to the relief they claimed and made an order on the 31st August 1915, directing that the interest at the rate of 9 per cent with yearly rests was to be charged against the plaintiff, and that so much of the amount due as represented principal should carry simple interest from the date of the order at the rate of 9 per cent.

On 19th October 1916, the High Court varied this order by declaring that the amounts so received should only bear simple interest at 6 per cent, and on the 15th December 1916, the matter being again before them, they directed that the whole amount should carry interest from the date of the order, but that the moneys received should be treated as though they had been received in respect of the principal moneys and not of the interest. An order was accordingly drawn up embodying the decision of the 19th October 1916; that order has been accepted by the appellant, but from the direction given on the 15th December as to appropriation this Appeal has been brought. The reason given by the learned Judges for their judgment was that they regarded the payments already made as

shown in an account filed by the defendants in the District Court on the 25th August 1915, as payments that had in fact been appropriated by the defendants as against principal and that from such appropriation there was no opportunity for them to recede. The account referred to is set out in the record in these proceedings, and it shows that as each sum of money was received it was charged with interest at the rate of 9 per cent and carried forward until the end of the year, when the total amount so found was credited as against the total amount which was due. At no time did the sums so credited do more than cover the claim for interest, and it therefore seems impossible to understand why it was that the money received was regarded as definitely appropriated in respect of the principal. Nothing has been pointed out to their Lordships to lead them to the conclusion that the High Court was right in the assumption that they then made in that respect.

The question then remains as to how, apart from any specific appropriation, these sums ought to be dealt with. There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one side or on the other, and the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital. That rule is referred to by Lord Justice RIGBY in the case of *Parr's Banking Company* v. *Yates*(1) in these words:

"The defendant's counsel relied on the old rule that does no doubt apply to many cases, namely, that, where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract."

Their Lordships can find nothing in this case to take the question outside the general principle referred to by the learned Lord Justice. They, therefore, think that the money received must be applied in the ordinary way, first in the reduction of the interest and when that is satisfied in the reduction of the

(1) [1898] 2 Q.B., 460 at 466

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principal. So far therefore as the appellants' Appeal is concerned this means that the High Court have been mistaken in the view that they took and that the Appeal should be allowed, but there is before their Lordships a cross-appeal which first of all raises the contention that the interest ought not to be higher than the Bank rate. Their Lordships are not prepared to accede to that contention. They think that the High Court were fully qualified to exercise the discretion which they did in the matter, and they will not lightly interfere with the exercise of such a power. Finally, the respondent contends that the District Judge was right in dividing the amount to be repaid under the order of the 31st August 1915 into the component parts of which it was originally made up, so much as to principal and so much as to interest, and to declare that the interest only runs on such part of the judgment-debt as flowed from the principal sum. Their Lordships agree with the High Court in thinking that no such distinction can be made.

They will therefore humbly advise His Majesty that the Appeal should be allowed with costs, that the cross-appeal should be dismissed with costs, and that in taking the account the moneys received should be applied first towards the payment of the interest and when that is satisfied towards the payment of the capital sum.

Solicitor for appellants: *Douglas Grant.*

Solicitor for respondent: *Edward Walgode.*

A.M.T.