

merits and hold the conviction justified by the evidence and the sentence not improper. We therefore confirm it.

Conviction affirmed.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

BALDEO PANDAY (PLAINTIFF) v. GOKAL RAI (DEFENDANT).*

Bond—Interest.

G gave B a bond for the payment of certain money within a certain time, with interest at the rate of 1½ per cent. per mensem, in which he agreed that, in case of default, the obligee "should be at liberty to recover the principal money and interest from his person and property" and mortgaged "his four anna share in mauza K until payment of the principal money and interest." Held that the bond contained an express contract for the payment of interest after due date at the rate of 1½ per cent. per mensem, and that such contract was enforceable.

Seemle that, where there is no express agreement fixing the rate of interest to be paid after the date a bond becomes due, an agreement to pay at the rate of interest agreed to be paid before such date cannot be implied, but the Court must determine what would be a reasonable rate to allow. In such a case the rate agreed to be paid before such date may ordinarily be regarded as the rate to be allowed after such date, provided that the rate agreed to be paid before such date is not excessive.

THIS was a suit for money charged on immoveable property by a bond. This bond was dated the 8th January, 1872, and the plaintiff claimed to recover thereunder Rs. 1,913-11-0, principal and interest. The suit was instituted on the 11th May, 1877. The facts of the case are sufficiently stated for the purposes of this report in the judgments of the High Court, to which the plaintiff appealed against the decree of the lower appellate Court.

Munshi *Kashi Prasad* and *Shah Asad Ali*, for the appellant.

Mr. *J. E. Howard*, the *Senior Government Pleader* (*Jala Juala Prasad*), and *Pandit Bishambhar Nath*, for the respondent.

The following judgments were delivered by the Court :

STUART, C. J.—In this case I think the appeal must be allowed. I am not sure that I quite follow the Subordinate Judge in the rea-

* Second Appeal, No. 1076 of 1877, from a decree of J. W. Power, Esq., Judge of Gházipur, dated the 6th September, 1877, modifying a decree of *Maulvi Zain-ul-Abdin*, Additional Subordinate Judge of Gházipur, dated the 28th May, 1877.

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sons he assigns for his judgment, but his order is clearly right and ought to be restored. The Judge, on the other hand, is as clearly wrong in allowing interest at the rate of six per cent. per annum "from the date when the bond fell due," evidently thinking that that was at the end of two years. He is also of opinion that the rate of interest stipulated in the bond, *viz.*, twenty-one per cent. is excessive. I differ from him on both points. The bond is in the following terms: "I, Gopal Rai, son of Bandhan Rai, do declare that, whereas Rs. 434 is due by me to Baldeo Panday on account of previous dealings, and whereas I have borrowed from the said Baldeo Panday a further sum of Rs. 566 for the payment of revenue and to meet other household expenses, the whole sum amounting to Rs. 1,000, I therefore execute this bond in respect of the sum borrowed at present and that formerly due by me, and agree and covenant that, having paid the entire aforesaid sum within two years with interest at Re. 1-12-0 per cent. per mensem, I shall take back the bond from the said mahajan; that in case of default the creditor shall be at liberty to recover the whole amount including principal and interest, by instituting a suit, or in any way he pleases, from my person and property, both moveable and immoveable; that until payment of the whole debt including principal and interest, I hypothecate my four anna share in mauza Kharkapur, which I have neither directly or indirectly transferred, nor shall I do so; that I shall get whatever payments I make endorsed on the bond, and that I shall not plead any payment without getting the same endorsed, and that if I do so or set up any receipt or discharge the same shall be invalid. Hence this bond." Now what was the contract here made? The contract I mean as to interest, for that was the whole question in the case before us. Clearly to my mind the contract so recorded was of this nature; "you the debtor shall not be troubled about the debt for two years, at the end of which time, if payment is made by you with interest at Re. 1-12-0 per cent. per mensem, there shall be an end to the transaction, and the bond will be returned to you; but if it be otherwise and you then make default, the creditor shall be at liberty," *not*, observe, "shall then be bound," "to recover the whole debt including principal and interest, and until payment of such principal and interest the property mentioned in the bond is hypothecated, all the other conditions of

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the bond meanwhile remaining in force." Such I take to be the true meaning of the contract in the present case, the rate of interest remaining the same in all the events contemplated. The only peculiarity that might suggest any doubt on this point might be supposed to arise from the fact that, although default appears to have been made at the end of the two years, the plaintiff, Baldeo Panday, did not institute his suit till the 11th May, 1877, upwards of three years after default. Now if the interest was excessive, this delay might possibly be justly attributed to the plaintiff's laches and fairly considered to have the effect of modifying his claim. But I do not think that in the present case such a consideration should prevent us from reading and construing the bond as a contract to be applied according to its terms, and according to these, as I view them, the creditor was not bound to proceed to recover immediately upon default, but might do so at any time within the limitation period, which, in such a case as the present, I should say would be twelve years from the time when the money became due.

Nor do I think the rate of interest stipulated for excessive. A Calcutta case was referred to (1) where Kemp, J., in delivering the judgment of the Court, appears to have considered that 18 per cent. per annum or Re. 1-8-0 per month was an excessive rate, but he appears to have formed that opinion from his reading of the judgment of Lord Selborne in the case of *Cook v. Fowler* (2) decided by the House of Lords, where the principle laid down is that "the rate of interest to which the parties have agreed during the term of their contract may well be adopted." The rate of interest, however, claimed in that case was £5 per cent. per month, or £60 per annum, and that was justly disallowed, the ordinary rate of interest in England not being more than 5 per cent. But when it is remembered that in India the ordinary rate of interest is one per cent. per month or 12 per cent. per annum, a rate of Re. 1-8-0, or even Re. 1-12-0, ought not in my opinion to be considered excessive, but may fairly and legally be stipulated for by contract. The corresponding rate in England would be not £60 per cent. but

(1) *Deen Doyal Lall v. Het Narain Singh*, 1 L. R. 2 Calc., 41; S. C. 25 W. R. 189. See also *Joy Ram v. Nobin Chunder Doss*, 25 W. R. 316; *Luchmece*

Narain v. Het Narain Singh, 18 W. R., 322; and *Sitanath Bose v. Mathuranath Roy*, 2 B. L. R. Ap. 10.
 (2) L. R. 7 H. L. 27.

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seven and a half or seven and three-quarter per cent. per annum, and would not, I am satisfied, were the facts the same as in the present case, be considered excessive by any English Court. For these reasons the plaintiff is entitled to our judgment reversing the decree of the Judge and restoring that of the Subordinate Judge, with costs in all the Courts.

SPANKIE, J.—The lower appellate Court holds that there is no provision in the bond as to the rate of interest to be charged after the date of payment has passed, and therefore interest must be allowed on the principle, not of implied contract, but of damages for breach of contract. Applying the case of *Deen Doyal Lall v. Het Narain Singh* (1) to the record before him, the Judge holds that the interest here demanded after the date of payment is excessive, and allows six per cent. only from the date when the bond fell due. It is contended that the terms of the contract have been misunderstood by the Judge, and that the appellant was, under the provisions of Act XXVIII of 1855, entitled to the interest agreed upon between the parties.

In my opinion the interest referred to in the bond as payable to the plaintiff alike during the term of the contract and until date of payment is Re. 1-12-0 per mensem. The bond recites that the obligor shall pay the amount of it with interest at Re. 1-12-0 per mensem within two years. This is the first condition. The second condition is that in case of default the obligee will be at liberty to recover the amount of debt including the principal and interest, by instituting a suit, or in any other way he pleases, both from the person of the obligor and from his moveable and immoveable property. The third condition is that, until payment of the entire amount including the principal and interest, the obligor hypothecates his four anna share in a particular village, and engages not to transfer it directly or indirectly.

Now it appears to me that, with respect to the interest "*post diem*," there is here clearly a contract to pay the interest agreed between the parties when the principal was lent. Not only was it to

(1) *Deen Doyal Lall v. Het Narain Singh*, 1 L. R. 2 Calc., 41; S. C. 25 W. R. 189 See also *Joy Ram v. Nobin Chunder Doss*, 25 W. R. 318; *Lucincee*

Narain v. Het Narain Singh, 18 W. R. 322; and *Sitnath Bose v. Mathuranath Roy*, 2 B. L. R. Ap. 10.

be paid during the continuance of the contract, but by the conditions of the bond the particular four anna share mentioned therein was charged as security for the payment of the debt, both principal and interest. The principal and the interest are the sum for which the bond was executed and the interest is the 21 per cent. agreed upon. I regard this case as being one free from doubt and hold that there is no question here of an implied contract to pay the same rate of interest "*post diem*" that was agreed upon "*ante diem*." If I could not construe the contract in this light, I should admit that the Judge was right in applying the precedent cited, that, in the absence of any defined rate of interest to be paid after the period of the bond had expired, the suggestion of an implied contract to pay at the same rate that the obligor was to pay during the term of the bond could not be allowed. The question then would be what would be a reasonable rate of interest to be allowed. In coming to a conclusion on this point, I should be unable to accept the Judge's finding that 6 per cent. was sufficient. The ordinary rule would appear to be that the creditor is entitled to the interest payable during the term of the bond, this amount being regarded as a fair measure of the rate to be allowed as a penalty for breach of contract, provided of course that the original interest claimed is not excessive. In this particular case the bond was executed on account of a former debt, and of a fresh advance of Rs. 566 to pay Government revenue, and it must not be forgotten that the defendant was allowed time. He had only paid Rs. 210 on account of the bond, and it is probable that it was at his own request that the plaintiff allowed the debt to stand over. He himself (defendant) states that he wanted to pay the debt due to plaintiff by borrowing the money from another banker, that he had asked the plaintiff to charge interest at Re. 1-12-0 per mensem up to the date of the term of the bond, and after that date to charge 1 per cent., *i.e.*, 12 per cent. per annum, but the plaintiff did not agree to this nor would he take his money. It is to be observed that defendant's story is not reliable, and is inconsistent with the fact that plaintiff took payment of Rs. 210 on the 20th January, 1874. If defendant was in a condition to borrow the money elsewhere why did he not do so? He assigns no reason why the rate demanded is excessive, and his own defence suggests that he was

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quite aware that the interest to the date of payment was 21 per cent., and he desired to alter the terms after the date expired. The Subordinate Judge allowed 21 per cent. to date of institution of the suit and 6 per cent. afterwards. This was an equitable judgment, and I would affirm it on that ground, did I not also hold that, under the terms of the contract, the plaintiff was entitled to charge 21 per cent. after the date of payment of the bond had expired. I would decree the appeal, and modify the judgment of the lower appellate Court so as to restore the decree of the Subordinate Judge with costs.

Appeal allowed.

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APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spinkie.

BAIJNATH (DEFENDANT) v. MAHABIR AND ANOTHER (PLAINTIFFS).*

Hindu Law—Inheritance—Succession of Daughters—Reversioners.

So long as a daughter not disqualified, or in whom a right of inheritance has once vested, survives, a daughter's son acquires no right by inheritance in his maternal grandfather's estate. *Amirtal Dose v. Ragonceekant Mitter* (1) followed.

Where, therefore, *R* died leaving issue two daughters, *B* and *P*, and *P* died shortly after *R* leaving sons, and while *B* was alive her sons and the sons of *P* sued, as the heirs of *R*, to set aside a mortgage of his real estate made by *B* as the guardian of her minor sons, and by *A*, the father of *P*'s sons, as their father and guardian, such suit was held not to be maintainable.

THIS was a suit for the possession of certain immoveable property, being the estate of one Ram Jiawan, deceased. Ram Jiawan left issue two daughters, Bataxi Kuar and Phulra Kuar. Phulra Kuar died shortly after her father leaving issue two sons, Rang Bahadur and Mahabir. Subsequently to her death Bataxi Kuar, as the guardian of her minor sons, Kaulesar, Deo Narain, and Rup Narain, and Arjan Rai, as the father and guardian of Rang Bahadur and Mahabir, minors, joined in a conditional mortgage of the property to Baijnath. Baijnath obtained possession of the property by foreclosure of this mortgage. The present suit was

* Second Appeal, No. 1066 of 1877, from a decree of Maulvi Zain-ul Abidin, Subordinate Judge of Gházipur, dated the 31st July, 1877, affirming a decree of Munsif Kishor Lal, Munsif of Rasra, dated the 3rd May, 1877.

(1) L. R. 2 Ind. App. 113; S. C., 15 B. L. R., 10; 29 W. R. 214.