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pending in execution of their decree. They do not come within the other class also. By reason of the provisions of the last portion of the first paragraph of section 325A no Civil Court can issue any process against the judgment-debtor's property which is under the management of the Collector in execution of a decree for money obtained after the property came under such management. The decree held by the appellants was passed after Har Shankar Prasad's property had been placed under the management of the Collector, and therefore in execution of that decree the said property is not liable to be sold so long as the management continues. It is thus clear that the appellants are not persons who are entitled to be entered in the list of creditors prepared under section 322B. There can be no doubt that if a claim like the one put forward by the appellants were admitted, the object of the management of the judgment-debtor's property by the Collector would become wholly infructuous.

For the above reasons, I am of opinion that the application of the appellants has been properly dismissed. I dismiss this appeal with costs.

Appeal dismissed.

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March 30.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.

RIKHI RAM AND ANOTHER (DEFENDANTS) v. SHEO PARSHAN RAM AND OTHERS (PLAINTIFFS).

Mortgage—Construction of document—Meaning of the term “ Sudi ”—Interest post diem.—Post diem interest decreed as damages not a charge on the mortgaged property.

The use of the term “ *sudi* ” (bearing interest) in a mortgage deed held not to imply a covenant to pay *post diem* interest, there being a specific agreement to repay the mortgage debt, principal and interest, in seven years.

Where in a suit upon a mortgage bond *post diem* interest is decreed as damages, the payment of such damages does not constitute a charge upon the mortgaged property. *Narindra Bahadur Pal. v. Khadim Husain* (1) referred to.

Second Appeal No. 540, of 1893, from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 6th March 1893, modifying a decree of Munshi Muhammad Siraj-ud-din, Subordinate Judge of Allahabad, dated the 23rd November 1892.

(1) I. L. R., 17 All., 581.

This was a suit to recover money payable under a mortgage bond. The material portion of the bond sued upon ran as follows:—"Inasmuch as I, having taken a loan of Rs. 1,200 from * * * bearing interest (*sudi*) at the rate of Rs. 1-12 per cent. per mensem, with a promise to repay in seven years, have brought it into my use, I agree that I will without demur pay the principal and interest as promised, * * * * and I will continue to pay (or go on paying) each six months' interest within the six months (in question), and if such * * * should not be paid, then that interest shall be considered as principal, &c." The plaintiffs claimed a sum which included a considerable item in the way of interest *post diem*, though it was not specified as such in the plaint. The Court of first instance (Subordinate Judge of Allahabad) held that under the mortgage sued upon the plaintiffs were not entitled to *post diem* interest as such; and further that though they might be entitled to get interest *post diem* by way of damages, yet for reasons stated by the Court even such damages ought not to be allowed. The first Court decreed the plaintiffs' claim in part. The plaintiffs appealed as to the allowance of *post diem* interest and as to the method of computing interest *ante diem* adopted by the first Court. The lower appellate Court (District Judge of Allahabad) held that the bond sued upon did provide for the payment of *post diem* interest and that the lower Court's computation of interest payable *ante diem* was incorrect. It accordingly varied the decree of the first Court, enhancing the amount payable under it by the defendants. The defendants appealed to the High Court.

Pandit *Sundar Lal* and Babu *Datti Lal* for the appellants.

Munshi *Ram Prasad* and Pandit *Moti Lal* for the respondents.

EDGE, C. J., and BLENNERHASSETT, J.—The suit out of which this appeal has arisen was one for sale under section 88 of the Transfer of Property Act. The plaintiffs claimed principal and a large amount for interest. They did not show in their plaint how the amount which they claimed for interest became or was mortgage money within the meaning of cl. (a) of section 58 of the Transfer of Property Act. They merely said that they were

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entitled to recover "Rs. 4,106-11-6 principal and interest detailed as below." That was not a properly drawn paragraph. When we look at the detail referred to in the plaint we find that they claimed up to the due date of the mortgage, which was seven years from the 20th of October 1879, the principal and interest contracted to be paid by the mortgagor, and after due date they claimed interest at a different rate on the sum of the principal moneys and of the contractual interest. It is evident that what they were claiming after the due date of the mortgage was not interest secured by the mortgage, or which they thought was secured by the mortgage, but interest in the shape of damages.

The first Court held that there was no contract, express or implied, to pay interest *post diem*. The lower appellate Court, relying on the use of the adjective "*sudi*" in the mortgage bond, held that the intention of the parties was that the principal should bear interest until payment, and gave the plaintiffs a decree under section 88 of the Act for the principal, interest up to due date and interest *post diem*. The same District Judge had given a similar decision in the case of *Ram Kuar and another v. Sheoratan Singh and others* which came up to this Court in second appeal (S. A. No. 67 of 1892). In that case this Court, having before it the views of the District Judge as to the effect in a mortgage contract of the use of the adjective "*sudi*," held that there was absolutely no express provision in the contract for *post diem* interest and that there were no sufficient materials for the Court finding by implication that the parties intended to contract for *post diem* interest. That is a decision bearing on the meaning of the term "*sudi*" in a contract of mortgage. In our opinion the District Judge misinterpreted the mortgage deed. All moneys lent upon mortgage are lent either bearing interest or not bearing interest. Those cases in which no interest at all is stipulated for must be of the rarest possible occurrence. "*Sudi*" as used in this mortgage deed merely meant that until due date the principal money should bear interest. Beyond that, it is obvious that the parties did not contemplate *post diem* interest. They expressly provided that all

payments of principal or interest during the mortgage term should be endorsed upon the mortgage bond and that payments not so endorsed should not be allowed if claimed. They made no provision for any payment of principal or interest *post diem*. We may conclude that the intention was that the debt and contractual interest should be paid within the seven years provided for in the bond. The defendants who have brought this second appeal are assignees of 1892 of the mortgagor's rights. The mortgagor who was a party to the suit has not appealed. As against him it would have been proper to have given a decree for damages for non-payment of the mortgage money on the due date, but a decree for damages, as pointed out in the judgment of the Full Bench of this Court in *Narindra Bahadur Pal v. Khadim Husain* (1) cannot constitute under the Transfer of Property Act a charge on the estate, *i.e.*, the mortgaged property could not be sold under section 88 (or rather section 89) in respect of damages which might be decreed for breach of contract to pay, although, if the mortgaged property is in the possession of the mortgagor, no doubt the decree for damages, which would be a decree for money, might be executed, if the Court thought fit so to grant execution of it, against the hypothecated property; but that would be a proceeding under the Code of Civil Procedure and not under the Transfer of Property Act. In that respect there may be a difference between the practice followed in the Courts in England and the law as it has to be administered in India under the Transfer of Property Act.

We allow this appeal, and we vary the decree of the Court below as against these appellants and the property hypothecated by limiting the amount for which the property may be sold to the amount due for principal and interest up to the 20th of October 1886, and the costs. The appeal is allowed with costs.

Appeal decreed.

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(1) I. L. R., 17 All. 581.