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payable by tenants-at-will for similar lands and fixed the rental of the ex-proprietary tenant at four annas in the rupee lower. Ali Mazhar apparently raised no objection and paid for many years the rent so fixed.

For the above reasons, being unable to agree in the reasons given by our learned brother, we set aside the decree under appeal and restore the decree of the lower appellate Court with costs.

Appeal decreed.

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February 7.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burdett.

LACHMI NARAIN AND ANOTHER (DEPENDANTS) v. UMAN DAT (PLAINTIFF).^{*}
Act No. IV of 1882 (Transfer of Property Act), sections 86 and 88—Decree for sale on a mortgage—Rate of interest after date fixed for payment.

Where a decree for sale on a mortgage gives interest after the date fixed by the decree for payments of the mortgage debt, it is not necessary that such interest should be at the contractual rate. *Rameswar Koer v. Mahomed Mehdi Hossein Khan (1)* and *Sundar Koer v. Rai Sham Krishen (2)* referred to.

THE only question raised in this appeal was as to the rate of interest allowable after the decree upon two mortgage bonds upon which a suit for sale had been brought. The bonds in suit provided for the payment of interest at the rate of 10½ per cent. per annum, with a condition that if the interest was not paid in the second year compound interest should be charged, and that this condition should remain in force until the whole amount was paid off. On the question of interest the lower Appellate Court (District Judge of Gorakhpur) found that, although compound interest was made payable, the rate of interest was not abnormal, and he allowed interest at the contractual rate until the date of payment. The judgment-debtors appealed to the High Court contending that, according to a recent ruling of the Privy Council, only interest at the usual Court rate should be granted after the date fixed by the decree for payment of the mortgage debts.

^{*} Second Appeal No. 286 of 1906 from a decree of William Tudball, Esq., District Judge of Gorakhpur, dated the 8th of January 1906, modifying a decree of Munshi Achal Bihari, Subordinate Judge of Gorakhpur, dated the 28th of August 1905.

(1) (1898) I. L. R., 26 Cal., 39.

(2) (1906) I. L. R., 34 Cal., 150.

Babu Parbati Charan Chatterji and Babu Satya Chandra Mukerji, for the appellants.

Babu Durga Charan Banerji and Munshi Gobind Prasad, for the respondent.

STANLEY, C.J., and BURKITT, J.—The suit out of which this appeal has arisen was a suit for sale of mortgaged property under two bonds. These bonds provided for the payment of interest at the rate of $10\frac{1}{2}$ per cent. per annum; with a condition that if the interest was not paid in the second year compound interest should be charged, and that this condition should remain in force until the whole amount was paid off. The learned District Judge, modifying the decree of the Court below as regards interest, allowed compound interest up to the date of realization. He says in the course of his judgment:—"As for the rate of interest to be allowed for the period subsequent to the date fixed for payment in the decree, I see no cause to decree any other than the contractual rate. It is true that it is compound interest, but the rate ($10\frac{1}{2}$ per cent. per annum) is not a high one, but is a little less than the prevalent rate (12 per cent. per annum). There was no harsh or unconscionable bargain and no hard case. The interest will therefore be the contractual rate up to the date of payment." It is contended on behalf of the defendants appellants that in view of the decision of their Lordships of the Privy Council in a recent case, interest should not be allowed over and above the Court rate after the date fixed for payment. In the case of *Rameswar Koer v. Mahomed Mehdi Hossain Khan* (1), Lord Hobhouse in delivering the judgment of their Lordships remarked as follows:—"The High Court founded their order on sections 86 and 88 of the Transfer of Property Act, which indicate clearly enough that the ordinary decree in a suit of this kind (that is a suit for sale on a mortgage) should direct accounts allowing the rate of interest provided by the mortgage up to the date of realization." It was understood in this Court from the language of this judgment that the Court in passing a decree upon a mortgage should ordinarily allow interest at the contractual rate up to the date of realization. In the recent case, however, of *Sundar Koer v. Rai Sham Krishen* (2) their Lordships, referring to the language used by Lord

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Hobhouse in the case of *Rameswar Koer v. Mahomed Mehdi Hossein Khan*, observe that the Judicial Committee did not intend in that case to lay down that in passing a mortgage decree the Courts should allow interest at the contractual rate beyond the date fixed for payment by the decree. Lord Davey in delivering the judgment of their Lordships quotes the passage from the judgment of Lord Hobhouse, which we have cited, and observes:—"The expression 'up to the date of realization' may have been used *per incuriam*, or it may have meant 'the day fixed for realization,' as in fact it seems to have been understood by the reporter of the case in the Indian Law Reports as expressed in his marginal note (I.L.R., 26 Calc., 39). Their Lordships cannot have intended to say that sections 86 and 88 of the Transfer of Property Act indicate that interest at the mortgage rate should be paid up to the time of actual payment of the mortgage money to the mortgagee." Then later on, after expressing approval of the decree of the High Court in which 6 per cent. per annum interest only, and not the mortgage rate, was allowed after the date fixed for the payment of the mortgage debt, Lord Davey observes:—"In the present case their Lordships have no hesitation in expressing their concurrence with the High Court of Calcutta, not only in allowing interest after the fixed day, but also in allowing interest at the Court rate and not at the mortgage rate. They think that the scheme and intention of the Transfer of Property Act was that a general account should be taken once for all, and an aggregate amount be stated in the decree for principal, interest and costs due on a fixed day, and that after the expiration of that day, if the property should not be redeemed, the matter should pass from the domain of contract to that of judgment, and the rights of the mortgagee should thenceforth depend not on the contents of his bond but on the directions in the decree." In view of this statement of the law by their Lordships it is open to the Court in determining the interest which should be payable after the day fixed for payment in the decree to limit the interest to the Court rate if it so think fit. It therefore is open to us in this case to modify the decree of the lower appellate Court in regard to interest. The learned District Judge did not think that the case before him was such as to justify any reduction in the interest payable up to

realization and therefore gave interest at the contractual rate. We think under the circumstances of this case that after the date fixed by the decree for payment simple interest only should be allowed at the contractual rate, and not compound interest. To this extent we modify the decree of the lower appellate Court. The appellants have substantially failed in the appeal and must pay the costs.

Decree modified.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

RAGHUBANS PURI (PLAINTIFF) v. JYOTIS SWARUPA AND ANOTHER
(DEFENDANTS).*

Civil Procedure Code, section 54—Rejection of plaint—Procedure—Plaint not to be rejected in part.

Held that under section 54 of the Code of Civil Procedure a Court cannot reject a plaint in part.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. W. K. Porter, for the appellant.

Mr. B. E. O'Connor, the Hon'ble Pandit Sundar Lal and Dr. Satish Chandra Banerji, for the respondents.

STANLEY, C.J., and BURKITT, J.—In the suit out of which this appeal has arisen the plaintiff asked for a declaration that a sale-deed, dated the 18th of October 1901, of property specified in the plaint, was void and claimed possession of the property detailed in that deed. He put in an alternative claim, that if the plaintiff was not entitled to possession of the buildings upon the land, a decree for possession of the land itself might be passed in his favour and the defendants ordered to remove the materials of the buildings and that the plaintiff might be put into possession of the land. He also asked for any other relief to which he might "in the ends of justice" be entitled.

It appears that some time between the years 1860 and 1866 the predecessor in title of the plaintiff leased at least a portion of the land in dispute to Mr. Frederic Wilson, the father and

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* Second Appeal No. 535 of 1905 from a decree of L. G. Evans, Esq., District Judge of Saharanpur, dated the 23rd of March 1905, confirming a decree of S. P. O'Donnell, Esq., Subordinate Judge of Dehra Dun, dated the 19th of May 1904.