APPELLATE CIVIL.

Before Mr. Justice Ashworth and Mr. Justice Iqbal Ahmad.

1927 *February*, 28.

GADDAR MAL (PLAINTIFF) *v.* THE TATA INDUSTRIAL BANK, LIMITED, BOMBAY (DEFENDANT).*

Act No. IX of 1872 (*Indian Contract Act*), *sections* 7, 8 *and* 9—*Banker and customer—Enhancement of rate of interest charged on overdrafts—What amounts to notice to customer.*

The mere sending of a notice by a bank to one of its customers that the interest charged on overdrafts against security held by the bank had been raised is not of itself sufficient to render the customer liable to pay the enhanced rate. But where, after receiving notice that the rate of interest has been raised, the customer borrows more money from the bank, the bank is justified in charging him interest at the enhanced rate.

THE facts of this case were as follows :—

This was a second appeal by the plaintiff arising out of a suit brought by the plaintiff against the Tata Industrial Bank, Limited, Bombay, defendant, for recovery of a balance alleged to be due under a contract arising out of overdrafts allowed by the Bank to the plaintiff from time to time, on security of a deposit with the Bank of 182 bales of cotton. The contract governing the suit was expressed in a letter of lien of the 5th of December, 1912, by the plaintiff in which it was agreed that the plaintiff on his part should deposit bales of cotton and obtain loans repayable upon demand from the defendant bank. The loans were to bear interest at Rs. 8-8-0 per cent. per annum and the Bank was to hold the cotton bales as security until directed by the plaintiff to sell them,

* Second Appeal No. 1671 of 1924, from a decree of Raj Rajeshwar Sahai, Third Additional Subordinate Judge of Aligarh, dated the 4th of September, 1924, confirming a decree of Jagdishwar Nath Kaul, Munsif of Hathras, dated the 22nd of February, 1923.

in which case the Bank were entitled at time of settlement to recover the loans made, along with the interest and certain charges for insurance and storage. Provision was made for variation of the rate of interest by agreement between the parties. On the 18th of March, 1922, the Bank informed the plaintiff by letter that they intended to charge Rs. 9 instead of Rs. 8-8-0 from that date, and, again, on the 21st of April, 1922, they intimated their intention to raise the interest to Rs. 10. To these two intimations the plaintiff made no reply. It is to be noted that in all the plaintiff obtained Rs. 24,900. Out of this sum, one advance of Rs. 3,400, made on the 8th of February, 1923, was subsequent to both the letters of the 18th of March and 21st of April, 1922, raising the interest from Rs. 8-8-0 to Rs. 9 and Rs. 10. The cotton was ultimately sold by the Bank under directions by the plaintiff and the plaintiff claimed that, on the 18th of February, 1922, when the sale was complete, there was a sum of Rs. 528-5-0 due to him out of the sale-price after deduction of insurance and storage costs, and after allowing interest to the Bank at Rs. 8-8-0. In his suit he ignored the fact of the Bank having raised the interest. The suit was resisted on the grounds that (*a*) the plaintiff had under-estimated the costs of storage and insurance and (*b*) that he was bound to allow the defendant the higher rate of interest from the dates of the letters of the Bank intimating their intention to charge the higher rates. With ground (*a*) there was no concern in this second appeal, as the decision on this issue was one of fact.

The suit was dismissed by the court of first instance and this decree was affirmed by the lower appellate court. The plaintiff appealed to the High Court.

1927

GADDAR MAL v. THE TATA INDUSTRIAL BANK, LIMITED, BOMBAY.

Munshi *Panna Lal*, for the appellant.

Dr. *N. C. Vaish*, for the respondent.

The judgement of ASHWORTH, J., after stating the facts as above, thus continued :—

Both the lower courts have held that the plaintiff was bound to pay the higher rates of interest and have given the same reasons for so holding. These reasons are set forth in the judgement of the trial court, in a manner approved by the lower appellate court, as follows :—

" *Issue* 2.—It is next contended by the plaintiff that the defendant is not entitled to claim the increased rate of interest at Rs. 9 per cent. and 10 per cent. per annum, for there was no subsequent agreement by the plaintiff to pay interest at the enhanced rate. The stipulation contained in the agreement is that interest shall be charged at the rate of 8½ per cent. per annum or at such other rate as may be from time to time agreed upon. This shows that the Bank had reserved to itself the right to increase the rate of interest from time to time. No customer would willingly and expressly agree to an enhancement of the rate that has once been stipulated, and we have, therefore, to look to the circumstances and see whether the plaintiff had accepted the increased rates. Letters, dated the 18th of March, 1922, and the 21st of April, 1922, demanding the increased rates of 9 and 10 per cent. per annum, respectively, were duly sent and delivered to the plaintiff who did not take any objection. If he was not prepared to accept the increased rates he ought to have protested and cleared his accounts with the Bank. But the silence on the part of the plaintiff shows that there was an implied acceptance of the rate which the Bank had the power to increase. It is well established law that acceptance can be made without express communication and the issue is, therefore, decided accordingly."

It does not seem to us to be correct to say that " the Bank had reserved to itself the right to increase the rate of interest from time to time." The loans by the Bank were payable on demand, but the Bank were entitled to retain the cotton as security, and in

the event of refusal of the plaintiff to pay on demand, to sell and to repay themselves out of the purchase money. If the plaintiff had refused to agree to the higher rates of interest the Bank would have had no right to charge them. All that it could have done would have been to close the account and, if the plaintiff failed to repay the balance due to the Bank, to realize from the bales. Indeed, that this was the meaning of the agreement seems to be accepted by both the lower courts, because they do not argue that from the date of the intimation of the higher rate the Bank was *ipso facto* entitled to the higher rates, but they both take up the position that the plaintiff's failure to intimate that he did not accept the offer to continue the loan under the higher rates, in the circumstances, amounted to conduct expressing acceptance of the offer of the Bank to continue the loan and make further loans, at the higher rates of interest.

The law on the subject of acceptance of an offer is indicated in sections 7, 8 and 9 of the Indian Contract Act and these sections must be read without reference to the English law on the subject. According to section 7, before a proposal becomes a promise rendering the promisee liable to the conditions contained in the promise, there must be an absolute and unqualified acceptance. This acceptance must be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes the manner and acceptance is not made in that manner, the promiser may require acceptance in the manner prescribed, but if he does not do so, he will be held to have accepted the acceptance in the manner that it was made. In section 8 provision is made for an implied acceptance by performance on the part of the

1927

GADDAR MAL v. THE TATA INDUSTRIAL BANK, LIMITED, BOMBAY.

promisee of the conditions of a proposal or by the acceptance of any consideration offered for a reciprocal promise invited from the promisee. In section 9 it is stated that the acceptance of any promise made in words is said to be "express" and made otherwise than in words is said to be "implied."

Ashworth, J.

In my opinion, a correct interpretation of the sections does not import into Indian law the English law as to acceptance by conduct. On a proper interpretation of these sections there are only three cases in which acceptance can be made otherwise than in words. One is when the promisor has specified a manner in which his proposal is to be accepted and that manner is not acceptance in words but acceptance otherwise than in words. A second is when acceptance is by performance of a condition of the proposal and the third is when acceptance of proposal is by the acceptance of any consideration offered for a reciprocal promise invited from the promisee. There is, however, one further case in which there may be acceptance by conduct which is not covered by sections 7, 8 and 9. It is when trade or mercantile usage or local usage can be invoked to import into the transaction a promise by the promisee which is not made either expressly or impliedly. For instance, there may be a recognized trade usage according to which a person borrowing from a bank or overdrawing is taken to contract to pay the bank rate of interest. It does not appear to me that English decisions as to acceptance by conduct can be invoked to extend the restrictions thus obtaining in India on the method of acceptance. Applying this law to the present case I may state that no mercantile or trade usage has been invoked by the Bank in this case.

We find that the Bank on the two dates, when they proposed higher rate of interest, in effect offered

1927

GADDAR MAL v. THE TATA INDUSTRIAL BANK, LIMITED, BOMBAY.

to continue the loans and to make further loans (up to the value of the deposited cotton) on condition that the higher rates of interest were paid at the time of settlement. There was clearly no express acceptance of this offer by the plaintiff. The Bank did not propose any method of acceptance otherwise than in words. Nor again did the Bank specify any condition of the proposal to be performed by the plaintiff and consequently there was no performance of the conditions of the proposal. The sole question then is whether the plaintiff accepted any consideration offered for a reciprocal promise invited from him. The proposal as to raising the interest was in effect a proposal by the defendant Bank not to demand at once the money loaned and to loan further money (up to the value of the security) if the plaintiff agreed to pay the higher rates of interest at the time of settlement. The proposal invited from the plaintiff a reciprocal promise to repay with the higher rate of interest at the time of settlement, and a further loan was offered as consideration for this reciprocal promise. The plaintiff did take a further loan. The plaintiff, therefore, did accept a consideration offered by the Bank. This offer of the Bank to lend a further sum cannot be separated off from its offer to continue (i.e., not to make immediate demand for) sums already advanced. It, therefore, appears to me that the Bank's offer to continue the loans and to make further loans on the basis of higher interest at the date of settlement was accepted by the plaintiff by reason of his taking a further sum subsequently to that offer.

Ashworth, J.

If it had not been for this acceptance of a further loan, I should have held that there was no acceptance by the plaintiff of the higher rates of interest. Even if the Bank had intimated in the said

1927

GADDAR MAL v. THE TATA INDUSTRIAL BANK, LIMITED, BOMBAY.

letters that in the event of their not hearing from the plaintiff they would presume acceptance by the plaintiff of the higher rates of interest, this would not have justified the Bank in claiming that their offer had been accepted in the manner prescribed, for it is well established in law that the manner prescribed cannot be mere silence. Assent must be by express words or positive conduct. No duty is cast by the law upon the person to whom an offer is made to reply to that offer. Consequently, an omission to reply will not constitute an illegal omission and, therefore, cannot fall within the definition of act as contained in the General Clauses Act, section 3 (2), Act X of 1897.

The consequence is that I would uphold the finding of the lower courts but on a different ground to that expressed by them.

IQBAL AHMAD, J. :—I agree.

BY THE COURT.—The order of the Court is that the appeal shall stand dismissed with costs.

Appeal dismissed.

Before Mr. Justice Mukerji and Mr. Justice Ashworth.

1927 *February*, 28.

LACHMAN DAS AND ANOTHER (DEFENDANTS) *v.* RAM PRASAD (PLAINTIFF) AND RAM PRASAD AND OTHERS (DEFENDANTS).*

Act No. I of 1872 (*Indian Evidence Act*), *section* 92, *provisos* 1 *to* 3—*Admissibility of evidence—Sale-deed—Evidence to show parties' intention that no title would pass.*

There is nothing in law to render invalid a sale of property by one person to another for the sole reason of giving that other person a right to register a mortgage-deed in respect of other property in a particular place.

* First Appeal No. 78 of 1924, from a decree of Rup Kishen Agha, Subordinate Judge of Budaun, dated the 6th of November, 1923.