

accruing after his transfer is duly registered according to the provisions of the Bengal Tenancy Act. This decision has been apparently approved of by a recent Full Bench decision in *Mahomed Abbas Mondul v. Brojo Sundari Debia* (1). That decision is a direct authority in support of the lower Court's decision, and we are not prepared to dissent from it. The law seems pretty clear upon the subject; and although it might seem a case involving hardship to the landlord, that though he may not have received a notice, by some neglect on the part of the Registrar or of the Collector, he is still liable to pay the costs of the suit for rent subsequently brought against the wrong person. Although it certainly was the case before the Bengal Tenancy Act was passed that the Courts always held that the landlord is entitled to look to his recorded tenant for all rent until he receives due notice of the transfer, the present law, as explained by the decision in *Kristo Bullow Ghose v. Kristo Lal Singh*, appears to have altered that state of things.

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We think we are unable to give the appellant any relief, and that the appeal must be dismissed with costs.

Appeal dismissed.

A. F. M. A. R.

Before Mr. Justice Macpherson and Mr. Justice Ameer Ali.

GUDRI KOER (PLAINTIFF) v. BHUBANESWARI COOMAR
SINGH AND ANOTHER (DEFENDANTS).*

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July 16.

Deed of conditional sale—Interest after the date fixed for payment of principal and interest—Absence of agreement to pay such interest—Compensation for breach of contract—Limitation Act (XV of 1877), sch. II, art. 116.

Where there is no stipulation in a deed of conditional sale to pay interest after the day fixed for the repayment of principal and interest, a claim for interest after due date is a claim for compensation for breach of contract, and a suit for the recovery of such compensation must be brought within six years from the date of the breach.

* Appeal from Original Decree No. 204 of 1890, against the decree of Baboo Nilmoni Das, Subordinate Judge of Sarun, dated 9th of June 1890.

(1) I. L. R., 18 Calc., 360.

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Juggomohun Ghose v. Manick Chund (1) referred to; *Mansab Ali v. Gulab Chand* (2), *Bhagwant Singh v. Daryao Singh* (3) approved of; *Bhugwan Lal v. Mohip Narain Singh* (4) and *Golam Abas v. Mohamed Jaffer* (5) followed.

SUIT for foreclosure.

By a registered deed of conditional sale, dated 15th September 1881 (7th Assin 1289 F. S.), Deo Coomar Singh, the father of the infant defendants, Bhubaneswari Coomar Singh and Rajrajeswari Coomar Singh, mortgaged certain shares in the properties specified in the schedule thereto annexed, to the plaintiff, Gudri Koer, as security for the repayment of the sum of Rs. 5,000, with interest at the rate of one rupee per cent. per mensem, on 15th August 1882. There was no stipulation in the deed for payment of interest after the due date. The provision as to the repayment of the principal and interest was in these terms:— "Therefore I do ingenuously declare and give in writing that I shall liquidate the whole of the Rs. 5,000, the principal consideration money aforesaid, besides interest at 1 per cent. per mensem from the date of the execution of this deed, on the 15th August 1882 in cash in one lump at once to the aforesaid vendee, and take back this baibilwafa deed. In case I fail to pay up the principal amount besides interest on the prescribed date, and the prescribed time expires, in that case (the mortgage) of the whole of the aforesaid shares sold shall become foreclosed in favour of the said vendee, and there is not nor shall be any need for any declaration by me, the declarant." Deo Coomar Singh died without redeeming the mortgage, and leaving the infant defendants his heirs and representatives.

On 30th November 1888 the plaintiff instituted this suit against the defendants, in which he claimed payment of Rs. 5,000 as principal and also Rs. 4,325 as interest from 15th September 1881 to 30th November 1888, further interest during suit, besides the costs of the suit, and interest on all sums until realization, and, in default of payment, foreclosure and possession. The defence on behalf of the minors was that the stipulated date of payment was the 15th August 1882, and as the suit had been instituted

(1) 7 Moo I. A., 279.

(2) I. L. R., 10 All., 85.

(3) I. L. R., 11 All., 416.

(4) Second Ap., No. 1292 of 1887, of 21st May 1888.

(5) See note, pp. 23-24.

after the expiration of more than six years from that date, the plaintiff's claim for interest subsequent to the 15th August 1882 was barred by limitation. It was further contended that the plaintiff was not entitled to subsequent interest, as there was no stipulation to that effect in the ikrarnamah baibilwafa.

The Subordinate Judge held that there was no express agreement in the deed of conditional sale that interest at the stipulated rate of 12 per cent. per annum was to continue to be payable even if the principal with interest remained unpaid on the 15th August 1882, the date fixed for payment, and that no such agreement could be implied in the absence of any words showing such an intention. He was of opinion that the plaintiff was entitled to interest after the due date of payment by way of damages for breach of the contract to pay, and that the rate stipulated in the deed was a fair and reasonable one in the district, and would be the proper measure of damages; and that although "interest" in section 86 of the Transfer of Property Act included damages which a Court of Justice might award the mortgagee for a breach by the mortgagor of the contract to pay on the due date, such damages did not become by operation of law a charge upon the mortgaged property until a decree for damages was passed by a competent court, and that therefore article 132 of schedule II of the Limitation Act did not apply. He held upon the authority of the cases of *Mansab Ali v. Gulab Chand* (1) and *Bhagwant Singh v. Daryao Singh* (2) that the plaintiff's claim for subsequent interest by way of damages was barred by article 116 of the second schedule of the Limitation Act, inasmuch as the suit had been brought more than six years from the due date of payment, the 15th August 1882.

The Subordinate Judge, accordingly, gave the plaintiff a decree for Rs. 5,000, with interest at 12 per cent. per annum up to the 15th August 1882 with costs, further interest at the same rate on the principal sum from the date of the suit until the date of the decree, and interest at 6 per cent. on all sums, including costs, from the date of decree until realization, and in default of payment that the defendants should be absolutely debarred of all right to redeem. He disallowed the plaintiff's claim for interest from the 15th August 1882 until the filing of the plaint.

(1) I. L. R., 10 All., 85.

(2) I. L. R., 11 All., 416.

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1891	From this latter portion of the decree the plaintiff appealed to the High Court.
GUDRI KOER v. BHUBANES- WARI COOMAR SINGH.	Dr. <i>Rash Behari Ghose</i> and Baboo <i>Abinash Chunder Banerjee</i> for the appellant. Moulvie <i>Mahomed Yusuf</i> and Baboo <i>Saligram Singh</i> for the respondents.

It was contended on behalf of the appellant that the Subordinate Judge was wrong in having disallowed interest from the 15th August 1882 until the filing of the plaint; that under Act XXXII of 1839 the plaintiff was entitled to interest from the due date of payment at the rate mentioned in the deed, which was a reasonable rate in the district, or at any other rate which the Court considered reasonable; that under section 86 of the Transfer of Property Act such interest was part of the mortgage money, and a charge upon the mortgaged property, and that article 132 of schedule II, Limitation Act, governed the case; that if, however, interest was not recoverable as interest, but as damages for breach of the contract to pay on the due date, then as the breach was a continuing one, article 116 of schedule II did not apply, and the plaintiff's claim was in time.

Moulvie *Mahomed Yusuf* on behalf of the respondents contended that Act XXXII of 1839 had no application, since it related to contracts in writing to pay a certain sum on a certain date. After the due date the time for payment was uncertain, and so was the amount of interest, and therefore interest after the due date could not be allowed under that Act. That there must be an express stipulation to that effect in the deed. Interest after the due date could only be recovered by way of damages for breach of the contract to pay. That article 116, schedule II of the limitation Act provided six years' limitation for a suit for the recovery of such damages, and the period began to run from the date of the breach, which in the present case was the 15th August 1882, the date fixed for the payment of the mortgage money; and the lower Court was therefore right in disallowing this portion of the plaintiff's claim. He relied on the cases of *Mansab Ali v. Gulab Chand* (1), *Bhagwant Singh v. Daryao Singh* (2), and the unreported

(1) I. L. R., 10 All., 85.

(2) I. L. R., 11 All., 416.

case of *Bhagwan Lal v. Mohip Narain Singh* (1), and especially on the judgment of PIGOT, J., in *Golam Abas v. Mahomed Jaffer*—Sp. App. 723 of 1889, in which case both sides were duly represented (2). He further contended that such interest could not be a charge on the property mortgaged under section 86 of the Transfer of Property Act, since damages for breach of the contract to pay on a certain date could not be interest within the meaning of that section.

The judgment of the Court (MACPHERSON and AMEER ALI, JJ.) was as follows :—

In this suit, which is for foreclosure, the plaintiff claims interest at the rate stipulated in the deed from the date on which the money became payable up to the date on which the suit was brought; and the question is whether he is entitled to get interest for such period at the stipulated rate or at any lower rate. The deed of conditional sale was executed on the 15th September 1881. The principal money, with interest at the rate of one per cent. per mensem, was payable on the 15th August 1882, and the suit was

(1) Second Appeal No. 1292 of 1887, of 21st May 1888.

(2) 2nd April 1890.

Before Mr. Justice Pigot and Mr. Justice Beverley.

GOLAM ABAS v. MAHOMED JAFFER.

Moulvie Mahomed Yusuf for the appellant.

Baboo Rajendro Nath Bose for the respondent.

PIGOT, J.—In this case, the question argued before us on this appeal, which was allowed to be argued, although not taken in the memorandum of appeal, was whether the interest claimed in the suit and allowed was properly allowed. The mortgage bond is one providing for the payment of the money secured by it in two instalments—one in Bhadro 1281 of Rs. 350, and the other in Bhadro 1282 of the residue, namely, Rs. 649. The bond provides thus :—The entire amount of the debt thus amounts to Rs. 999, half of which is Rs. 449-8. I do therefore pledge and hypothecate my share in mouzah Sera, pergunnah Anda, and execute this bond to the effect that I shall pay the aforesaid amount of money, principal and interest, at the rate of one rupee per cent. per month.

The cases of *Mansab Ali v. Gulab Chand* (1) and *Bhagwant Singh v. Daryao Singh* (2) are cited as authority for the proposition that when interest is not expressly made payable after the date fixed for the repayment

(1) I. L. R., 10 All., 85.

(2) I. L. R., 11 All., 416.

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brought on the 30th November 1888. There is no stipulation in the deed to pay interest after the due date, and certainly no agreement to that effect can be implied from the terms of the deed. The Subordinate Judge has held that, under these circumstances, the suit having been brought more than six years from the date on which the money became due, the claim for interest from that time is barred by limitation.

It is argued that, under Act XXXII of 1839, the plaintiff is entitled to get interest from the due date at such rate as the Court may think fit to allow, and that under section 86 of the Transfer of Property Act such interest is part of the mortgage money and becomes a charge on the property hypothecated. It certainly does not become a charge on the property hypothecated by the terms of the deed itself, and we think it is unnecessary to consider whether, if the plaintiff's claim was allowed, wholly or in part, it would be necessary to treat it as such a charge, because it has first to be determined whether the claim is in any way sustainable. The question whether it is sustainable depends upon the nature of the claim. If it is a claim for compensation for the breach of a

of the mortgage-money, interest is not claimable, save as damages at such reasonable rates as the Court may direct. The case of *Gossain Luchmee Narain Pooree v. Tekait Het Narain Singh* (1) might have been also, but has not been, cited as authority for that proposition.

We think that the contention of the appellant is correct. We think that upon the terms of the mortgage bond interest is not expressly made payable after the date of the instalments; but we think that as it is provided that the amount mentioned in the bond is to be paid by two instalments, principal and interest, the interest on the first instalment must be considered to be intended to run until the whole amount should be paid, that is to say, up to the date fixed for the second instalment. After that we think there is no agreement for the payment of interest, and interest would run at such rates as the courts would deem reasonable; but then that is only payable as damages, and, as was in the case of *Mansab Ali v. Gulab Chand* (2), there is not in the case of such damages that continued breach contemplated under article 115 of 2nd schedule of the Limitation Act, and the result is that, as the suit was not brought within six years from the date of the undertaking to pay, the claim for it is barred. Therefore, as the result the decree must be modified by allowing interest at 12 per cent. per annum only up to Bhadro 1282.

(1) 18 W. R., 322.

(2) I. L. R., 10 ALL., 85.

contract, then the contract being in writing and registered would fall under article 116, schedule II of the Limitation Act, and unless there was a recurring cause of action, the time would run from the date on which the money became due. Great stress has been laid on the use of the word "interest" in the Act of 1839 and in the Transfer of Property Act, but we think that nothing much turns on this. In the case of *Juggomohun Ghose v. Manickchand* (1) their Lordships of the Privy Council, speaking of Act XXXII of 1839, say this:—"It seems to have been framed not simply on the principle of compensation to the creditor, but also on that of penalty to the debtor for not paying punctually at a time when he must have known the debt or sum, specific in amount, was to be paid." And again:—"The Act supposes a party to have been sued for breach of a contract for the payment, by virtue of a written instrument, of a sum certain at a certain time." This is a very clear indication that such a claim as this is one for compensation for the breach of a contract, and it has been held specifically to be so by the Allahabad High Court in the cases of *Mansab Ali v. Gulab Chand* (2) and *Bhagwant Singh v. Daryao Singh* (3). These decisions have been followed by this Court in two unreported cases, viz., *Bhugwan Lal v. Mohip Narain Singh* (4) and *Golam Abas v. Mahomed Jaffer* (5). The matter is, therefore, concluded by authority, and we are certainly not prepared to take a different view from that expressed in those cases. It was also held in all those cases that there was no recurring cause of action, that the breach took place when the defendant failed to pay the money due in accordance with the terms of his contract, and that the time began to run from that date. The Subordinate Judge was, therefore, in our opinion right in holding that the claim in the present suit was barred by limitation.

It was further urged that the Subordinate Judge ought to have allowed the amendment of the plaint, and should have permitted the plaintiff to give evidence to show that the time granted was at the request of the defendant, and that there was an agreement

(1) 7 Moo. I. A., 279.

(2) I. L. R., 10 All., 85.

(3) I. L. R., 11 All., 416.

(4) Second Appeal No. 1292 of 1887,
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(5) See note, pp. 23-24.

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to pay interest subsequent to the due date. This is a matter on which the plaint is entirely silent. The plaintiff's pleader, when examined subsequent to the presentation of that petition, stated that there was no subsequent agreement in any way affecting the terms of the loan. Having regard to these circumstances and to the great delay in making the application for amendment of the plaint, we are not prepared to say that the Subordinate Judge was wrong. The appeal is therefore dismissed with costs.

Appeal dismissed.

C. D. P.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Ghose.

1891
 July 28.

PREONATH KARAR (APPELLANT) v. SURJA COOMAR GOSWAMI
 AND OTHERS (RESPONDENTS).*

Administrator—Administrator not so described, sale by—Sale by administrators not quod administrators, but as heirs—Government securities.

Certain persons who were heirs of a deceased lady, and had also taken out administration to her estate, limited to certain Government securities, sold such Government securities to a *bona fide* purchaser under a written instrument, in which the vendors were not described as administrators.

Held, that the failure to so describe themselves did not affect the sale, inasmuch as they were entitled to sell either as heirs or administrators; and although as heirs they could sell no more than their own shares in such securities, yet the entire purchase-money having come to their hands, they, as administrators, were bound to administer the same as part of the assets of the estate, the question whether they did so or not, not being one which would affect the title of the purchaser.

West of England and South Wales District Bank v. Murch (1) and *Corser v. Cartwright* (2) followed in principle.

THIS was a suit brought by one Preonath Karar for the purpose of obtaining a declaration of right to a half-share in certain Government promissory notes of the nominal value of Rs. 7,400. The Government promissory notes originally belonged to one Nilmadhub Goswami, who died unmarried. On his death his

* Appeal from Original Decree No. 33 of 1890, against the decree of Baboo Hemanga Chundra Bose, Subordinate Judge of Hooghly, dated 9th December 1889.

1) L. R., 23 Ch. D., 138.

2) L. R., 7 H. L., 731.