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these proceedings the effect of the deposit upon the interest due from the judgment-debtor.

In our opinion the principles of Order XXIV may be applied to the facts of this case even if the terms of that Order were not expressly meant to apply to deposits made after the passing of a decree. The judgment-debtor deposited the full amount found due by the trial court, both principal and interest. The plaintiff might have withdrawn this amount without admitting that it was in full discharge of her claim. She would not have prejudiced her appeal by the withdrawal of a certain sum in part satisfaction of her claim and we think it unreasonable that the judgment-debtor should be called upon to pay interest on the principal sum after the date of the deposit.

King, C.J. and Ziaul Hasan, J.

We accordingly allow the appeal and restore the order of the first Court dated the 10th of December, 1932, with costs throughout.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

ANGNO (DEFENDANT-APPELLANT) *v.* MOHAN LAL (PLAINTIFF-RESPONDENT)*

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Oudh Rent Act (XXII of 1886), sections 3(10), 19A and 141—Remission of rent—Section 19A, Oudh Rent Act, whether applies to thekedar—Thekedar *agreeing to pay rent irrespective of any calamity*—Thekedar, *whether can get remission of rent—Civil Procedure Code (Act V of 1908), section 34—Section 141, Oudh Rent Act, whether controls section 34, Civil Procedure Code—No reason for allowing future interest at 12 per cent.—Interest at 6 per cent. is just and proper.*

Section 19A of the Oudh Rent Act, which contains the provision for remission of rent, is not one of those sections in which according to section 3(10) of that Act, the expression "tenant" includes a *thekedar*. The rights and liabilities of a *thekedar*

*Second Rent Appeal No. 52 of 1932, against the decree of H. J. Collister, I.C.S., District Judge of Lucknow, dated the 24th of September, 1932, modifying the decree of S. Mohammad Zahid, Sub-Divisional Officer of Lucknow, dated the 9th of April, 1932.

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in regard to remission of rent must therefore be determined by the terms of the contract between the parties. So where the *qabuliat* provides that the *thekadar* would be liable to pay rent irrespective of any calamity which might occur "whether on earth or from heaven", the *thekedar* is not entitled to any remission of rent. *Ram Narain* v. *Hon'ble Uday Pratap Adiadat Singh* (1), relied on. *Karamat* v. *Wazir Husain* (2), and *Metropolitan Water Board* v. *Dick Kerr & Co., Ltd.* (3), distinguished. *Horlock* v. *Beal* (4), referred to.

Section 141 of the Oudh Rent Act does not control the discretion possessed by the Court under section 34 of the Code of Civil Procedure, to allow future interest at such rate as the Court deems reasonable. So where there are no reasons for allowing future interest on arrears of rent after the date of the decree at the rate of 12 per cent. per annum, it is just and proper to allow future interest only at the rate of 6 per cent. per annum which is usually allowed in such cases.

Mr. *Ram Bharose Lal,* for the appellant.

Mr. *Ramapat Ram,* for the respondent.

SRIVASTAVA, J.:—This is a defendant's appeal arising out of a suit for arrears of rent due from a *thekadar.*

The first contention urged on behalf of the appellant is that he is entitled to the remission of rent allowed by the Government to tenants for the half year in suit. Provision for remission of rent is contained in section 19-A of the Oudh Rent Act. Section 3, clause (10) of the same Act shows that the expression "tenant", as used in certain sections of the Act and in no others, includes a *thekadar.* Section 19-A is not one of such sections. The rights and liabilities of the appellant must therefore be determined by the terms of the contract between the parties.

Paragraph 1 of the *qabuliat,* exhibit 1, provides that the *thekadar* would be liable to pay rent irrespective of any calamity which might occur "whether on earth or from heaven". In *Ram Narain* v. *Hon'ble Uday Pratap Adiadat Singh* (1), which was a case of suspension of rent on account of scarcity, it was held that the respective

(1) (1910) 13 O.C., 146.
(2) (1923) I.L.R., 46 All., 140.
(3) (1918) L.R., A.C., 119.
(4) (1916) L.R., A.C., 486.

rights and liabilities of lessees and their superior proprietors are to be determined by the terms of the contract between the parties. *Karamat* v. *Wazir Husain* (1), which has been relied upon by the learned counsel for the appellant, does not apply to the case. That was a case under the Agra Tenancy Act, under section 4 of which Act the word "tenant", unless there is something repugnant in the subject or context, includes *thekadar* or lessee.

It has also been argued that examples are not wanting in the English case law in which it has been held that a party is excused from the performance of a contract by reason of the implications contained in the terms of the contract. Reference has been made to *Metropolitan Water Board* v. *Dick Kerr & Co., Ltd.* (2), and reliance has been placed on the following observations to be found in the judgment of Lord DUNEDIN in that case—

> "My Lords, I shall content myself with one quotation from the opinion of one of the majority. Earl LOREBURN points out that in all cases it must be said that there is an implied term of the contract which excuses the party, in the circumstances, from performing the contract, and then continues: 'It is in my opinion the true principle, for no Court has an absolving power, but it can infer from the nature of the contract and the surrounding circumstances that a condition which is not expressed was a foundation on which the parties contracted. He further points out that the particular *ratio decidendi* in various cases is sometimes that performance has become impossible, and that the party concerned did not promise to perform an impossibility; sometimes it is put that the parties contemplated a certain state of things which fell out otherwise."

(1) (1923) I.L.R., 46 All., 140. (2) (1918) L.R., A.C., 119.

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Srivastava, J.

I do not think that the principle enunciated above has any application to the present case. In this case there was a clear contract to the contrary. The *thekadar* bound himself to pay the arrears irrespective of anything which might happen in the shape of failure of the crops for one reason or another. The following observations of Lord WRENBURY in *Harlock* v. *Beal* (1), are more in point—

> "If a party has expressly contracted to do a lawful act, come what will—if in other words he has taken upon himself the risk of such a supervening cause—he is liable if it occurs, because by the very hypothesis he has contracted to be liable."

I have therefore no hesitation in agreeing with the learned District Judge that the appellant is not entitled to the remission of rent claimed.

Next it was argued that the plaintiff should not have been allowed future interest at 12 per cent. per annum. Section 141 of the Oudh Rent Act provides that when an arrear of rent remains due from any underproprietor or tenant, he shall be liable to pay interest on the arrears at the rate of 1 per cent. per mensem. In my opinion this section does not control the discretion possessed by the Court under section 34 of the Code of Civil Procedure, to allow future interest at such rate as the Court deems reasonable. The learned District Judge has not given any reasons for allowing future interest after the date of the decree at the rate of 12 per cent. per annum. I think it will be more just and proper to allow future interest only at the rate of 6 per cent. per annum which is usually allowed in such cases.

I accordingly modify the decree of the lower court to this extent that future interest will be allowed only at the rate of 6 per cent. per annum. The order of the lower court is confirmed in all other respects. Under the circumstances I make no order as to costs of the appeal.

Appeal partly allowed.

(1) (1916) L.R., A.C., 486.