has jurisdiction to extend the time originally fixed under section 27 of the Provincial Insolvency Act, for an application by the debtor for discharge, after the expiry of that time but before an order of annulment is passed under section 43 of the Provincial Insolvency Act.

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge and Mr. Justice Ziaul Hasan

Thomas, A.C.J.

LALA RAM NARAIN (DEFENDANT-APPELLANT) *v.* THAKUR CHANDRIKA PRASAD AND OTHERS (PLAINTIFFS-RESPONDENTS)*

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April, 11

United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 30 and 33—Mortgage—Sections 30 and 33 of United Provinces Agriculturists' Relief Act, whether apply to mortgages—Usufructuary mortgagee giving lease of mortgaged property to mortgagor—Rent reserved in lease, whether interest—Rent, whether can be reduced under section 30—Usurious Loans Act (X of 1918) as amended by U. P. Amendment Act (XXIII of 1934)—Interest—Rate of interest, when excessive.

Section 33(1) of the United Provinces Agriculturists' Relief Act applies to every agriculturist-debtor who is entitled to sue for account under a written engagement whether the written engagement amounts to a mere promissory note, a simple bond, a simple mortgage-deed, a usufructuary mortgage-deed or a mortgage by way of conditional sale. *Dharam Singh* v. *Bishan Sarup* (1), followed. *Laluchand* v. *Girjappa* (2), and *Hari* v. *Lakshman* (3), referred to.

Section 30 of the United Provinces Agriculturists' Relief Act is applicable to usufructuary mortgages. When a usufructuary mortgagee executes a lease of the mortgaged property in favour of the mortgagor and the rent reserved is no more than the return to be made to the mortgagee over and above what is actually lent by him then this "rent" comes within the definition of interest and can be dealt with according to the provisions of section 30 of the United Provinces Agriculturists' Relief Act.

*First Civil Appeal No. 59 of 1936, against the decree of Mr. Abid Raza, Additional Civil Judge of Sitapur, dated the 29th of February, 1936.

(1) (1937) A.I.J., 882. (2) (1895) I.L.R., 20 Bom., 469.
(3) (1881) I.L.R., 5 Bom., 614.

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The Legislature has laid down specific principles on which excessiveness or otherwise of the interest is to be judged and those principles are contained in the amendments made by the Local Legislature in the Usurious Loans Act of 1918. Cases coming up before courts after the passing of the local amending Act must be decided on the principles laid by the Act. The first important amendment made by the local Act in section 3 of the original Act is that the court can now relieve the debtor of liability in respect of excessive interest not only when the interest is excessive and the transaction was substantially unfair but also where either the interest is excessive *or* the transaction was substantially unfair. Another amendment of far-reaching effect is that the amending Act has laid down the limits between which interest should or should not be held excessive.

Ram Krishna Kulasi v. *Heramba Chandra Ray* (1), *Uman Shankar* v. *Ram Nath* (2), *Ganga Bakhsh* v. *Jagat Bahadur Singh* (3), and *Abdul Aziz Khan* v. *Appayasami Naicker* (4), referred to.

Messrs. *M. Wasim, R. N. Harkauli* and *Ali Hasan,* for the appellant.

Messrs. *Radha Krishna Srivastava* and *S. N. Srivastava,* for the respondents.

THOMAS, C. J. and ZIAUL HASAN, J.—These six connected appeals arise out of five suits brought for accounts under section 33 of the United Provinces Agriculturist's Relief Act by two sets of plaintiffs against three sets of defendants. Four of these suits were decided by the learned Additional Civil Judge of Sitapur who decreed the plaintiffs' suits and the remaining fifth suit, the subject of appeal No. 61 of 1936, was decided by the Civil Judge of Sitapur who upheld the pleas of the defendants and decreed the suit only in part. All the appeals have been heard together, as the points raised in appeals Nos. 59 and 60, which may be considered the main appeals, cover the other appeals also. We first take up appeals Nos. 59 and 60 of 1936.

In both these cases the plaintiffs were three brothers, namely, Thakur Chandrika Prasad, Raj Rajeshuri

(1) (1929) I.L.R., 56 Cal., 960.
(2) (1926) 3 O.W.N., Sup., 222.
(3) (1895) L.R., 22 I.A., 159.
(4) (1903) I.L.R., 27 Mad., 131.

Prasad *alias* Gopalji and Maheshuri Prasad and while the defendants to the suit in appeal No. 59 was Lala Ram Narain, the defendants to the other suit were Lala Govind Prasad and seven others (appellants in appeal No. 60). Both these suits were tried together by the learned Additional Civil Judge.

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It appears that on the 30th of August, 1937, the plaintiffs mortgaged half of their shares in the villages of Ashrafpur, Narsohi, Amkhera, Bahadurpur and Arhwal Khurd to Lala Ram Narain for a sum of Rs.60,000 and the other half of their shares to Lala Govind Prasad and others (the appellants in appeal No. 60) for a similar amount. Both the mortgages were at their inception simple and the interest stipulated for in both the deeds was at 10 per cent. per annum compound yearly. It was however provided that if default was made in the payment of interest, the mortgagees would be entitled to get possession of the mortgaged property. The mortgagors paid interest on both the mortgages for about two years in the beginning but began to make default afterwards. In 1933 however the mortgagees in both the cases were put in possession of the mortgaged property by mutual agreement and at the same time both the sets of mortgagees gave the properties in theka to the mortgagors, separate *pattas* and *qabuliats* being executed in respect of the shares in each of the villages. The thekas were for two years, 1341 and 1342 Fasli, and it was provided that if the mortgagors-lessees failed to pay the theka money, the mortgagees would be entitled to eject them. This provision was however enforced in respect of the Ashrafpur property only from which the mortgagors were ejected through the Revenue Court (*vide* exhibit A-31). In the other villages the mortgagors still continue in possession.

The plaintiffs' case was that they were agriculturists, that the interest stipulated for by the mortgages was usurious, that it was reduced to 6 per cent. per annum

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by the mortgagees themselves when they gave the properties in theka to them and that the thekas were fictitious. The defence of both the sets of the defendants was that the thekas were quite genuine, that the plaintiffs were estopped from questioning the genuineness of the thekas, that suits for accounts under 33 of the United Provinces Agiculturists' Relief Act could not be brought against mortgagees of immovable property, that the rate of interest is not usurious, that the lease money could not be reduced under section 30 of the Agriculturists' Relief Act and that the court had no jurisdiction to reduce it. The mortgagees-defendants in appeal No. 60 also contested the plaintiffs' claim to be agriculturists. On these pleas nine issues were framed by the learned Judge of the court below for disposal of the two suits and with the exception of the issue on the question of the leases in favour of the mortgagors being genuine or fictitious, almost all the other points were decided in favour of the plaintiffs. As a result the stipulated rate of interest was reduced to 8 per cent. per annum simple and it was ordered that from the 1st of January, 1930, till the 7th of May, 1935, interest will be calculated at Rs.5-8 per cent. compound and from the 8th May, 1935, till the date of suit at Rs.4-8 per cent. compound. It was further ordered that whatever may have been realized by the defendants-mortgagees in each case will be deducted according to the dates on which the payments were made and that the rest of the interest and principle in each case was declared in that case to be due against the plaintiffs. The parties were ordered to bear their own costs. The defendants-appellants in both these suits have raised the following points before us:

(1) That section 33 of the United Provinces Agriculturists' Relief Act does not apply to mortgages.

(2) That the stipulated rate of interest should not have been reduced under the Usurious Loans Act.

(3) That section 30 of the Agriculturists' Relief

Act is not applicable to usufructuary mortgages.

(4) That the court below had no jurisdiction to interfere with the rent fixed by the leases given to the mortgagors-plaintiffs.

(5) That the defendants-mortgagees are entitled to their costs of the suit.

In appeal No. 60 a further ground was taken that the plaintiffs were not agriculturists but this plea was not pressed before us.

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We take up these points in order.

1. It is argued that though it may be conceded that the terms of sub-section (1) of section 33 of the United Provinces Agriculturists' Relief Act are wide enough to cover secured loans, yet sub-section (2) shows that section 33 was not intended to apply to mortgages. Much stress is laid on the concluding words of sub-section (2), namely, "pass a decree in favour of the defendant". It is argued that a court acting under the United Provinces Agriculturists' Relief Act cannot pass a decree for sale or foreclosure of a mortgage, which decree, it is contended, can only be passed under order XXXIV of the Code of Civil Procedure. We are unable to accept this argument. The Act does not provide for the creation of any special courts as does the Encumbered Estates Act and section 2(5) defines "court" as a civil court so that it is the ordinary civil court having necessary pecuniary jurisdiction which deals with matters under the United Provinces Agriculturists' Relief Act. This being so we fail to see any bar to an ordinary civil court, in which a suit under section 33 has been filed by a mortgagor, giving the defendant-mortgagee a decree for sale or foreclosure if he so desires and if money is payable to the mortgagee, which are conditions precedent to the passing of a decree in favour of the defendant under sub-section (2) of section 33. In our view there is nothing in sub-section (2) to prevent a court from giving the defendant-mortgagee a decree to which he may be entitled under the law,

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though the decree would not be in a suit brought under order XXXIV, of the Code of Civil Procedure. We cannot also accept the argument of the learned counsel for the appellants that sub-section (1) of section 33 should be deemed to have been modified by sub-section (2), as it is sub-section (1) which lays down the substantive law, sub-section (2) merely prescribing the procedure to be followed. Therefore if anything sub-section (2) should, we think, be read subject to the provisions of sub-section (1) and not *vice versa*. Moreover, as we have already said we find nothing in sub-section (2) which may be said to be in conflict with the provisions of sub-section (1) or to show that section 33 was not intended to apply to mortgages. On the other hand that sub-section clearly lays down that in suits under sub-section (1),—

> "The Court shall follow the provisions of Chapter IV of this Act."

Now Chapter IV contains sections 28 and 30, besides others, and it cannot be denied that both these sections are applicable to mortgages as well as to unsecured debts. Further, we find that Forms A and C prescribed under rule 4 framed under the United Provinces Agriculturists' Relief Act, both of which refer to secured debts also, show that Chapter V of the Act, relating to maintenance of accounts, which includes section 33 also, is applicable both to secured and unsecured debts.

The learned counsel for the appellants placed great reliance on section 16 of the Deccan Agriculturists' Relief Act (XVII of 1879) the wording of which is almost the same as that of sub-section (1) of section 33 of the United Provinces Agriculturists' Relief Act and it was pointed out that in *Hari* v. *Lakshman* (1) it was held that section 16 of the Deccan Agriculturists' Relief Act did not apply to mortgages. We may, however, note that it was owing to this decision of the Bombay High Court that the Deccan Agriculturists' Relief Act was amended so as to make a clear provision entitling a mortgagor to

(1) (1881) I.L.R., 5 Bom., 614.

sue for accounts only—vide *Laluchand* v. *Girjappa* (1), so that it is clear that the intention of the Legislature in Bombay also originally was to give the benefit of a suit for accounts to a mortgagor as well. The decision in *Hari* v. *Lakshman* (2) is no ground for supposing that the intention of the framers of the United Provinces Agriculturists' Relief Act was that mortgage debts should be exempt from the operation of section 33, and, as we have said above, we are clearly of opinion that no such inference can be drawn from the wording of either sub-section (1) or sub-section (2) of section 33 of the Act. We are in full agreement, if we may say so with respect, with their Lordships of the Allahabad High Court in *Dharam Singh* v. *Bishan Sarup* (3) in which it was held that section 33(1) applies to every agriculturist debtor who is entitled to sue for account under a written engagement whether the written engagement amounts to a mere promissory note, a simple bond, a simple mortgage-deed, a usufructuary mortgage-deed or a mortgage by way of conditional sale. We therefore decide this point against the appellants and hold that the learned Judge of the court below was perfectly right in holding that the plaintiffs were entitled to bring the suits under section 33 of the United Provinces Agriculturists' Relief Act.

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(2) It is contended on behalf of the defendants-appellants that the stipulated rate of interest which was 10 per cent. per annum compound yearly should not have been interfered with as being excessive not only because much higher rates than this have been held by courts to be not excessive but also because the excessiveness or otherwise of the interest should have been judged with regard to the circumstances prevailing at the time the mortgages were made and not to the present circumstances. In support of the first of these grounds, the learned counsel relies on *Ram Krishna Kulasi* v. *Heramba Chandra Ray* (4) and *Uman Shankar* v. *Ram Nath* (5)

(1) (1895) I.L.R., 20 Bom., 469. (2) (1881) I.L.R., 5 Bom., 614.
(3) (1937) A.L.J., 882. (4) (1929) I.L.R., 56 Cal., 960.
(5) (1926) 3 O.W.N., Sup., 222.

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and in support of the latter proposition on *Ganga Bakhsh* v. *Jagat Bahadur Singh* (1) and *Abdul Aziz Khan* v. *Appayasami Naicker* (2). The authorities relied on by the learned counsel do not however apply to the present cases as the Legislature has laid down specific principles on which excessiveness or otherwise of the interest is to be judged and those principles are contained in the amendments made by the local Legislature in the Usurious Loans Act of 1918. Cases coming up before courts after the passing of the local amending Act must of necessity be decided on the principles laid down by that Act. The first important amendment made by the local Act in section 3 of the original Act is that the court can now relieve the debtor of liability in respect of excessive interest not only when the interest is excessive *and* the transaction was substantially unfair but also where either the interest is excessive *or* the transaction was substantially unfair. Another amendment of far-reaching effect is that the amending Act has laid down the limits between which interest should or should not be held excessive. According to the first proviso enacted by the amending Act interest is to be deemed excessive in the case of a first mortgage (like the present ones) if (1) the rate exceeds 12 per cent. per annum or (2) the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 12 per cent. per annum and the interval between the rests were six months. As the stipulated rate of interest in the present cases was 10 per cent. per annum compound with yearly rests, it is clear that it comes under neither of these two provisions and cannot be held to be positively excessive. Under proviso 4 interest is to be deemed to be not excessive if (1) the rate does not exceed 7 per cent. per annum and (2) the amount of interest that may become due at any time does not exceed the amount that would become due at that time if the rate were 7 per cent. per annum and the

(1) (1895) L.R., 22 I.A., 153. (2) (1903) I.L.R., 27 Mad., 131.

intervals between rests were six months. The present rate does exceed 7 per cent. per annum and it also exceeds 7 per cent. per annum with six monthly rests. Therefore, it cannot also be said to be not excessive, so that as the learned Judge has remarked, it is neither necessarily excessive nor necessarily not excessive. The learned Judge has however reduced it to 8 per cent. per annum in view of the circumstances of the case and we agree with him on this point also.

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In the first place, the amount borrowed was very large and according to the well-recognized rule, the larger is the amount of the loan the lesser should be the rate of interest.

In the second place, we find that the security in each of the two cases before us was ample. Exhibits 15 and 24 in appeal no. 60 show that the total annual demand for rent of all the five properties comes to Rs.19,732 and exhibits 7 to 12 in appeal no. 60 show that the total amount of land revenue is Rs.2,519-6. The net profits thus amount to Rs.17,213. If we multiply this amount by thirty it comes to more than five lakhs of rupees and even if we take twenty times the profits the value comes to about three lakhs. The total amount borrowed under the two mortgages was Rs.1,20,000. Thus the security was ample for both the mortgages.

In the third place, there is evidence on the record to show that the mortgagors possessed other property than that mortgaged by the two mortgage deeds in question (*vide* exhibits 25 to 28 in appeal no. 60 and exhibit 12 in appeal no. 65).

In the fourth place, we must note that when the mortgagees gave leases of the property to the mortgagor, they themselves agreed to accept as lease money a sum which works out to an interest of about 6 per cent. per annum on the amount that was due to them on the date of the leases and that the leases also provided for renewel on the same terms.

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The learned Judge of the court below has very carefully considered the circumstances of the case and come to a just conclusion in our opinion. We therefore decide this point also against the appellants.

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3. The contention that section 30 of the United Provinces Agriculturists' Relief Act was not applicable to usufructuary mortgages was not pressed by the learned counsel for the appellants in view of a recent decision of ours in *Deputy Commissioner, Sitapur* v. *Chhotey Singh* (First Civil Appeal no. 84 of 1936).

4. This point is connected with points 2 and 3. It was contended that the rent reserved by the *pattas* and *qabuliats* was rent under the Oudh Rent Act and that therefore it was not within the jurisdiction of the civil court to reduce it. Section 2(8) of the United Provinces Agriculturists' Relief Act, however, lays down that "interest" includes return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or in the form of service or otherwise. The word "otherwise" makes this provision comprehensive enough to cover what is called rent in the cases before us. It is manifest that the mortgagees defendants executed the leases and were entitled to this "rent" only by virtue of the mortgages in their favour so that this "rent" was no more than the return to be made to the mortgagee over and above what was actually lent by them and this being so, it comes within the definition of interest and interest is undoubtedly to be dealt with according to the provisions of section 30 of the United Provinces Agriculturists' Relief Act. Section 30(4) of the Act provides—

> "Any amount already received by the creditor on account of interest in excess of that due under this section shall be credited towards the principal; but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him."

Thus whatever may have been realized by the mortgagees by way of interest is amenable to the provisions of this sub-section and the learned Judge of the court below was perfectly right in holding that if anything has been realized by the mortgagees in excess of the interest due to them, it should be credited towards the principal. This decision cannot in any way affect the appellants' rights to recover the lease money by suit in the revenue court in the usual course nor will mere decrees obtained by them from the revenue court be deemed to constitute money "realized" by them as has very rightly and carefully been laid down by the learned Additional Civil Judge. We therefore see no reason whatever for interference with the learned Judge's decision on this point also.

5. The argument of the learned counsel for the appellants is that as these suits were in effect suits on mortgages, the provisions of order XXXIV, rule 10 of the Code of Civil Procedure must be applied and the mortgagees-appellants should be awarded their costs. We are unable to accept this argument also. The suits were purely suits for accounts under section 33 of the United Provinces Agriculturists' Relief Act and we cannot for a moment consider the mortgagees-appellants entitled to their costs when we find that almost all the points raised in defence by them were held against them. If they had exercised their rights under section 33(2) of the United Provinces Agriculturists' Relief Act and prayed for decrees in their favour then perhaps the suits could have been regarded as suits coming under order XXXIV, of the Code of Civil Procedure. As they did not do so, the suits remained purely suits under section 33 and as we have already said, it is idle on their part to claim costs when they have lost all their points.

The result is that we confirm the decrees of the learned Additional Civil Judge and dismiss these appeals with costs.

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Appeal no. 61 of 1936

The suit in this case was brought by the other set of plaintiffs, namely, Chaudhri Narain Prasad and Chaudhri Gobind Prasad who are father and son, against Lala Ram Narain. The following were the six mortgage deeds standing in favour of the defendant:

(1) A deed for Rs.3,000, dated the 12th of February, 1924, providing for interest at Re.1 per cent. per mensem compound.

(2) A deed dated the 16th of May, 1924, for Rs.3,500 fixing interest at Re.1 per cent. per mensem compound with six-monthly rests.

(3) Deed dated the 22nd of January, 1925 for Rs.1,900 stipulating interest at Re.1 per cent. per mensem compound with six-monthly rests.

(4) Deed dated the 18th of June, 1925, for Rs.5,000 with interest at the above rate.

(5) A deed dated the 13th of October, 1927, for Rs.20,000 providing for interest at annas 12 per cent. per mensem compound with six-monthly rests.

(6) A deed dated the 26th of September, 1932, executed for Rs.16,000 in lieu of Rs.10,000 of which possession was given to the mortgagee and the balance of Rs.6,000 carried interest at annas 10 per cent. per mensem compound with six-monthly rests.

This suit was decided by the learned Civil Judge of Sitapur who upheld the pleas raised by the defendant and holding that though section 33 of the United Provinces Agriculturists' Relief Act applied to mortgages, it could not be applied in the present case as the mortgagee gave the property in theka to the mortgagors and that section 30 of the Act cannot be applied to rent reserved by the theka given by the mortgagees to the mortgagors, dismissed the plaintiffs' suit except with regard to a portion of the transaction of the 26th of

September, 1932. He accordingly reduced the contractual rate of interest on Rs.6,000 to 6 per cent. compound with yearly rests from the 1st of January, 1930 to the 7th of May, 1935 and thereafter to 5 per cent. compound.

As we have held above in appeals nos. 59 and 60 of 1936 that sections 33 and 30 of the United Provinces Agriculturists' Relief Act are applicable to usufructuary mortgages, the decree of the learned Judge cannot be allowed to stand. We, therefore, decree this appeal with costs and setting aside the decree of the court below, send back the case to that court for decision in the light of our remarks in appeals nos. 59 and 60 of 1936.

Appeals nos. 65 and 75 of 1936

These are cross-appeals in a suit brought by Thakur Chandrika Prasad, Thakur Raj Rajeshuri Prasad and Thakur Maheshuri Prasad, against two defendants, namely, Lala Ram Narain and Lala Lachhmi Narain. Appeal no. 65 has been brought by the plaintiffs against the defendants and appeal no. 75 has been brought by Lala Ram Narain against the plaintiffs, making his co-mortgagee Lala Lachhmi Narain a respondent.

The mortgage-deed (exhibit 1) in this suit was a simple mortgage-deed executed by the plaintiffs on the 8th of April, 1925, in favour of Lala Ram Narain and Lala Lachhmi Narain for a sum of Rs.90,000. The stipulated rate of interest was 10 per cent. per annum compoundable yearly. On the pleas raised by the defendants to the suit, the only issue framed by the learned Additional Civil Judge of Sitapur, who decided the suit, was whether or not interest up to the 1st of January, 1930, was usurious and deciding this issue in the affirmative, he reduced it to 10 per cent. per annum simple. The defendant-appellant in his appeal challenges the reduction of the rate of interest and also prays that costs of the suit should have been awarded

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to him. The plaintiffs on the other hand in their appeal no. 65 of 1936 complain that interest has not been sufficiently reduced in this case.

The learned counsel for the defendant-appellant urges that interest prior to the 1st of January, 1930, should not have been reduced as usurious. He relies on the same arguments which he put forward in appeals nos. 59 and 60, which were against the same set of plaintiffs. For reasons already given in those appeals we hold that the learned Additional Civil Judge was right in reducing the contractual rate of interest. As regards costs, the remarks made in the aforementioned two appeals apply to this case also. The result is that we dismiss the defendant-mortgagee's appeal with costs.

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The learned counsel for the plaintiffs-appellants has pleaded for reduction of the interest to 8 per cent. per annum, as in appeals nos. 59 and 60 of 1936, and for this purpose he has given us figures showing that the value of the mortgaged property according to exhibits 2, 3, 4, 5, 8, 9 and 10 comes to about Rs.2,47,000 at thirty times the profits and to Rs.1,65,000 at twenty times the profits. The security in this case was not so ample as in appeals nos. 59 and 60 and we do not think that there is any good reason for interfering with the trial court's discretion in fixing the rate of interest.

We therefore dismiss the plaintiffs' appeal also with costs.

Appeal no. 88 *of* 1936

This appeal has also been filed by Lala Ram Narain, defendant-mortgagee, in a suit brought by Thakur Chandrika Prasad and his two brothers against him and Lala Bhagat Ram, respondent no. 4. In this case the plaintiffs mortgaged two villages with possession to the defendants on the 23rd of September, 1929, for a sum of Rs.25,000. The mortgage was for a term of seven years and as possession was given to the mortgagees no rate of interest was specified. On the very date of the mortgage, however, the mortgagees leased out the villages

to the mortgagors at an annual rent of Rs.2,589-4 including Rs.704-4 land revenue. A special feature of the lease was that neither were the lessors liable to ejectment during the term of the lease nor were they at liberty to relinquish the lease within the term and it was provided that the theka would continue up to redemption of the mortgage. The points raised in the ground of appeal are that section 33 of the United Provinces Agriculturists' Relief Act does not apply to mortgages, that the court below was in error in considering the rent reserved by the lease to be interest, that the civil court cannot reduce the amount of rent under section 30 or section 33 of the United Provinces Agriculturists' Relief Act and that the rent decreed in favour of the defendants-mortgagees by the revenue court cannot be interfered with. It will be seen that all these points were raised in appeals nos. 59 and 60 of 1936 and have been dealt with above and over-ruled. With regard to the decrees of the revenue court obtained by the defendants-mortgagees, the learned Judge of the court below has clearly said as follows:

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> "Of course the rent court decrees for the arrears of lease money would remain unaffected; unless the decretal debts are paid, they would not be taken into consideration in accounting as payments."

The mortgagees therefore need not be under the apprehension that the amounts of the decrees obtained by them will be reduced.

As the learned Judge has not in his judgment fixed the rate of interest but has left it to the office to calculate it according to Schedule III of the United Provinces Agriculturists' Relief Act and as the decree of his court fixed it at Rs.5-8 per cent. per annum compound, the appellant's objection is that this rate should be at Rs.6-8 simple and not Rs.5-8 compound. He relies on the fact that no rate of interest has been specified in the mortgage-deed. No doubt the rate of interest is not

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specified in the mortgage-deed but if we take the rent reserved by the lease into account, it works out to a rate of compound interest at $7\frac{1}{2}$ per cent. We may also mention that in the other mortgage-deeds executed by the same plaintiffs which are the subject-matter of appeals nos. 59 and 60, the interest provided for was also compound. We therefore find no ground for interfering with the lower court's decree and this appeal is also dismissed with costs.

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Appeal dismissed.