1934.

PEM MAHTON v. KING-EMPEROR.

AGARWALA, J.

recent case of *Dahu Raui* v. *Emperor*(1) where their Lordships held, dissenting from the case of *Tadi Soma Naidu*(2) and the decision of their own Court in *Ramesh Pada Mondal* v. *Kadambini Dassi*(3) that "criminal Bench of the High Court, when it has signed its judgment, has no power to alter or review it, *even if it may be without jurisdiction*, except to correct a clerical error". In my view, therefore, this Court has no power to entertain an appeal from the conviction and sentence passed on the appellants after the dismissal of the appeal which they preferred from jail, and neither this Bench nor the Bench which admitted the appeal has power to review or revise the order of dismissal. The appeal must, therefore, be dismissed.

VARMA, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Wort and Varma, JJ.

1934.

December, 7, 10.

SURAJMAL MARWARI

v.

HURO RAI.*

Sontal Parganas Settlement Regulation, 1872 (*Regulation III of* 1872), *section* 6, *applicability of—rule, whether applies to interest to be awarded on the decretal amount—Code of Civil Procedure*, 1908 (*Act V of* 1908), *section* 34—*court, discretion of.*

Section 6 of the Sontal Parganas Settlement Regulation, 1872, relating to interest, applies only to the interest to be decreed under the bond and does not limit the powers of a court under section 34 of the Code of Civil Procedure, 1908, to award interest on the decretal amount until realization.

* Appeal from Original Decree no. 229 of 1930, from a decision of Rai Bahadur Amarendra Nath Das, Deputy Magistrate-Subordinate Judge of Deoghar, dated the 30th of June, 1930.

(1) (1933) I. L. R. 61 Cal. 155.
(2) (1923) I. L. R. 47 Mad. 428.
(3) (1927) I. L. R. 55 Cal. 417.

The effect of the rule embodied in section 6 is exhausted when the matter passes into the domain of judgment.

Rai Bahadur Debi Prasad Dhandhania v. *Thakurain Kusum Kumari*(1) and *Basudeo Bhagat* v. *Sheikh Kadir*(2), followed.

Rani Keshobati Kumari v. *Kumar Satya Niranjan Chakravarty*(3), not followed.

Sourendra Mohan Sinha v. *Hari Prasad*(4), explained.

Hari Prasad Singh v. *Sourendra Mohan Sinha*(5), referred to.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Wort, J.

K. P. Jayaswal and *S. S. Bose*, for the appellant.

L. M. Ghose and *Bindeshwari Prasad*, for the respondent.

WORT, J.—This appeal is from a decision of the Subordinate Judge of Deoghar and raises two questions which relate to interest. The action was on a mortgage bond, dated the 17th of September, 1925, and the learned Judge granting a decree has awarded interest at the bond-rate which was $1\frac{1}{2}$ per centum per mensem up to the date of the institution of the suit. From the date of the institution of the suit interest was allowed at the rate of 6 per centum per annum till realization, but this was conditional upon the interest not exceeding the principal amount, that is to say, Rs. 6,500.

The question before this Court for determination relates to interest between the date of the institution of the suit and the date of the decree and interest

(1) (1930) I. L. R. 10 Pat. 63.
(2) (1926) I. L. R. 5 Pat. 433.
(3) (1918) Cal. W. N. (Pat.) 305.
(4) (1926) I. L. R. 5 Pat. 135; L. R. 52 I. A. 418.
(5) (1922) I. L. R. 1 Pat. 506.

1934.

SURAJMAL MARWARI v. HURO RAI.

WORT, J.

thereafter. The case was argued before us on a former occasion and at that date it was understood by the Court that the second point was not pressed. However, the matter has been re-argued, and the appellant-mortgagee places reliance upon the second point as also on the first which I have mentioned. At the first hearing the provisions contained in Order XXXIV, rules 2, 4 and 11, of the Code of Civil Procedure were freely referred to as governing this matter and it was argued at that time that the matter was one for the discretion of the learned Judge deciding the case. Dealing with that matter as a general argument, in my judgment, the proposition contended for by the respondent cannot be supported. Order XXXIV, rules 2 and 4, deal respectively with a decree in a mortgage suit for foreclosure and for sale, and the words used in the rules seem to me to infer that the question of interest up to the date of the decree is one which is not within the discretion of the Court. But Order XXXIV, rule 11, dealing with interest after the decree, is clearly a matter within the discretion of the Court, as the word used there is 'may', and that is the decision of this Court in the case of *Sripat Singh* v. *Naresh Chandra Bose*(1). But when this matter is analysed it seems to me that although by the Act of 1893 the Civil Procedure Code, and more particularly this part of the Civil Procedure Code, applied to the action before us, Order XXXIV, rules 2 and 4, are not relevant for the purpose of deciding this case.

It has been argued by the learned Advocate for the appellant (as I understand the argument) that Regulation III of 1872, section 6, is nothing more than reproduction of the rule of damdupat, and the argument proceeded on the lines that the decisions relating to damdupat, therefore, applied to the interpretation of section of the Regulation. In my judgment that argument cannot be supported for the

(1) (1932) 13 Pat. L. T. 545.

reason that we have the Regulation to construe, and, unless a decision is given on the words of the Regulation itself, it is impossible to say that the decision is in point. I will, therefore, proceed to deal in the first instance with the interest between the date of the institution of the suit and the date of the decree. The provisions of section 6 of the Regulation are, shortly stated, in the first place, that no decree shall grant interest at a rate in excess of 2 per cent. per mensem, and that no compound interest shall be granted—compound interest arising from any intermediate adjustment of the account, which by the explanation given in the section itself is intended to include 'the renewal of an existing claim by bond, decree or otherwise'. In other words, the expression 'intermediate adjustment' includes the renewal of one loan by the execution of a bond. The next relevant provision for the purpose of the point at issue is that interest on any debt or liability for a period of less than one year shall not exceed 25 per cent. of the principal, and, whether one year or more, the interest in any case shall not exceed the principal amount of the original debt or loan. As I say, that is the substance of the section and I have repeated to a very large extent the actual words of the section itself. Now it will be seen that there is nothing in the section which would entitle the learned Subordinate Judge to reduce the interest from the bond-rate to a lesser sum. What comes within the mischief of the section is, first of all, compound interest; and, secondly, the total amount of interest in excess of the sum of the loan itself, that is to say, the principal sum. Therefore, in so far as the Judge intended to mean by saying that up to the date of the decree no sum of interest in excess of the principal sum should be awarded, it is patent that his decision was right. The learned Advocate on behalf of the respondent sought to support the decision of the Subordinate Judge by the application of Usurious Loans Act (Act VIII of 1918). Under that Act the Court has

1934.

SURAJMAL MARWARI v. HURO RAI.

WORT, J.

jurisdiction to reduce interest which is excessive on the ground that the transaction between the parties was substantially unfair. It is impossible, in my judgment, to hold that the learned Judge has exercised any jurisdiction under that Act, and for this reason. If he had come to the conclusion that the interest was excessive and substantially unfair, he would have reduced it in the first instance, that is to say, he would have reduced the interest agreed upon between the parties. He has not done so, but as I have already pointed out he has allowed 18 per cent. per annum, which was the amount of interest agreed upon, up to the date of the institution of the suit. To put the matter in another way, if he had considered that the interest was unfair, he would have reduced it not only from the date of the institution of the suit but also before that period. In my judgment there is nothing in the Regulation which would have justified the learned Judge to reduce the rate as he has done. It is equally clear from the attitude which the learned Judge has taken in the case that he has not treated the matter as being a case where interest was excessive or substantially unfair. For that reason, in my opinion, the decision of the Subordinate Judge was wrong; and in so far as there was a reduction of interest between the date of the institution of the suit and the date of the decree, to that extent at any rate the decree must be amended and the mortgagee will be entitled to interest at the rate of 18 per cent. per annum up to the date of grace mentioned by the decree, that is to say, the date up to which the mortgagor has option to pay off the mortgage debt. This will be conditional upon the interest so awarded not exceeding the principal sum lent under the mortgage.

The next question that remains is a more difficult one, and is with regard to interest from the date of the decree up to the date of realization. The learned Judge has divided the period by fixing the date at the 7th of September, 1928, as I have already pointed out, but in my judgment this is erroneous. With regard

1934.

SURAJMAL MARWARI v. HURO RAI.

WORT, J.

to the interest between the dates of the institution of the suit and the decree, the judgment which I have given will entitle the plaintiff to interest from the 7th of September, 1928, till the date of the expiration of the date of grace, and for reasons which will appear in my judgment with regard to the last period with which I am going to deal.

The only case in this Court which will entitle the respondent to succeed on this point is that of *Rani Keshobati Kumari* v. *Kumar Satya Niranjan Chakraverty*(1) where Roe, J. and Coutts, J., dealing with a Ghatwali tenure in the Santal Parganas, observed as follows at page 317 of the Report:

"The sole question is whether under section 6 of Regulation III of 1872 the Respondent is entitled to a decree for more than half the mortgage debt. The learned Subordinate Judge while recognising the force of section 6 has made a decree for eight lakhs of rupees with interest from the date of the filing of the suit. This is clear contravention of section 6. Under Order XXXIV of the Civil Procedure Code the decree of the Court must set forth the amount due on the latest day of payment."

Then the learned Judge proceeds to say that "this is the decree which is contemplated by section 6 of Regulation III of 1872 and it should be directed that the amount due on the day of payment be eight lakhs of rupees". It is contended that the learned Judge applied section 6 of Regulation III by inference to the period after the decree. Now this matter came up for consideration of their Lordships of the Privy Council in the case of *Sourendra Mohan Sinha* v. *Hari Prasad*(2) where again their Lordships of the Judicial Committee were dealing with Regulation III of 1872. The main question for decision in that case was whether a Subordinate Judge of Bhagalpur (which is outside the Santal Parganas), dealing with

(1) (1918) Cal. W. N. (Pat.) 305.
(2) (1926) I. L. R. 5 Pat. 135, L. R. 52 I. A. 418.

1934.

SURAJMAL MARWARI v. HURO RAI.

WORT, J.

land of the Santal Parganas, was a Court under the Santal Parganas Settlement (Amendment) Regulation of 1908. That point was decided in the affirmative. Then came the consideration of the matter of interest. Sir John Edge, delivering the opinion of their Lordships of the Privy Council, quoted at length the judgment(1) of this Court delivered by the Chief Justice Sir Dawson Miller who is reported to have said as follows:

"It is not very clear why the learned Judge awarded interest only upon the amount of the personal decree and not on the amount of the mortgage decree, but there is no cross-appeal on this question. I think there is much to be said for the argument that the Santal Parganas Regulation applies only to the interest to be decreed under the bond, and does not limit the powers of a Court under section 34 of the Civil Procedure Code to award interest on the decretal amount until realization. But it has been held in this Court in *Rani Keshobati Kumari* v. *Kumar Satya Niranjan Chakraverty*(2) that interest under the Code should not be awarded upon the decretal amount in so far as it includes interest on the principal debt or loan, but only upon the amount of the principal debt itself, as to do so would contravene the provisions of the Regulation relating to compound interest. The principle underlying this decision applies equally where the amount decreed as interest already equals the sum advanced. Although I have some doubt as to the propriety of the decision mentioned, I am not prepared to differ from the conclusion there arrived at, and I think we should follow that decision".

It is said that their Lordships of the Privy Council in a sense confirmed the decision to which I have referred, the soundness of which Sir Dawson Miller seems to have doubted, by their ultimate

(1) (1922) I. L. R. 1 Pat. 506.
(2) (1918) Cal. W. N. (Pat.) 305.

decision in the case in a somewhat lengthy passage in Sir Dawson Miller's judgment. Their Lordships of the Judicial Committee went on:

" But it is not necessary or advisable to consider whether the discretion of the High Court on that question of interest from the date of the institution of the suit was wisely exercised or not in respect of the amount decreed on the principal sum secured by the mortgage bond ".

Their Lordships therefore declined to consider the matter and, therefore, in my judgment it is impossible to say that this Court's decision given by Roe, J. and Coutts, J. was by inference confirmed by their Lordship's decision. The matter was further discussed in the case of *Basudeo Bhagat* v. *Sheikh Kadir*(1) where Das, J. (as he then was) in delivering the principal judgment in the case stated as follows:

" The next question is whether we should allow the plaintiffs interest on the decree under section 34 of the Code of Civil Procedure ".

The learned Judge then refers to the decision in *Hari Prasad* v. *Sourendra Mohan Sinha*(2) to which I have made reference as being a part of the decision of their Lordships of the Judicial Committee, and proceeds to make the following statement:

" The learned Chief Justice of this Court thought that there was much to be said for the argument that the Santal Parganas Regulation applies only to the interest to be decreed under the bond and does not limit the powers of a Court under section 34 of the Code of Civil Procedure to award interest on the decretal amount until realization; but he felt bound to follow an earlier decision of this Court ".

Then Mr. Justice Das (as he then was) proceeds to make this statement: " The case of *Hari Prosad Sinha* v. *Sourendra Mohan Sinha*(2) went up to the

(1) (1926) I. L. R. 5 Pat. 433.
(2) (1922) I. L. R. 1 Pat. 506.

1934.

SURAJMAL MARWARI v. HURO RAI.

WORT, J.

Privy Council, and it is clear from the decision of their Lordships(1) that the question rests on the discretion of the Court, and not on the Santal Parganas Regulations". Foster, J. was careful to state that he agreed in the order which was to be passed, but he raised a question whether Regulation III of 1872 could be construed in such a way as to make 'so large an inroad on the law of contract'. But the fact that Foster, J. agreed with the order to be passed which included interest at the rate of 6 per cent. per annum on the decretal amount (which would clearly mean interest upon interest) clearly showed that the opinion of both the learned Judges was to the effect that interest after the decree or after the days of grace would not be governed by the Regulation. That case might therefore be considered to be binding on this Court. However, the matter is placed beyond any doubt so far as this Court is concerned by the decision in the case of *Rai Bahadur Debi Prasad Dhandhania* v. *Thakurain Kusum Kumari*(2). There the point was directly decided; and if it could be said that it was not directly decided, on the plain reading of the judgment itself having regard to the circumstances it would, in my judgment, have to be held that at least by inference this matter has been put beyond controversy so far as this Court is concerned. I think it is clear in the first instance that the facts of that case disclose that at the time of the institution of the suit the plaintiffs either had recovered the amount or that the interest on the bond had amounted to a sum in excess of the principal. No interest was allowed between the date of the institution of the suit and the date of grace. The argument of the mortgagee-plaintiff had been that, as the Regulation had operated in such a way as to stop interest running, he was entitled to interest between the date of the institution of the suit and the date of the decree. The learned Judges

(1) (1926) I. L. R. 5 Pat. 135; L. R. 52 I. A. 418.
(2) (1930) I. L. R. 10 Pat. 63.

deciding the case held that the contention could not be supported. Having dealt with the argument, to which I have made reference, they said 'it is otherwise, however with subsequent interest'. Then referring to a certain authority they held that "interest after the decree should run on the principal amount. The authority of that decision has been shaken by the fact that both the Chief Justice and Bucknill, J. in *Hari Prasad's* case(1) had doubted its correctness although they did not actually decline to follow it. It appears to us to be wrong in principle because the effect of the rule of damdupat is exhausted when the matter passes into the domain of judgment; and there is no reason why interest at the court-rate should not be decreed on the amount due under the mortgage from the expiry of the date of grace." Then in reference to *Sourendra Mohan's* case(2) the learned Judges said that when it came before the Judicial Committee "it was treated as a question of the discretion of the Court". That is an authority for the proposition that so far as the interest after the date of grace is concerned, the matter is not governed by the Regulation. It is on the assumption that the matter was governed by the Regulation that the learned Subordinate Judge in this case has made the order that interest should run from the date of the institution of the suit up to the date of realization and that it should not exceed Rs 6,500. I have already pointed out and I would like to repeat that the learned Subordinate Judge was correct in so far as that part of the order related to interest up to the date of the expiration of the days of grace, but that it was erroneous so far as it applied to interest thereafter.

In my judgment, therefore, the appeal succeeds and the judgment and decree of the Subordinate Judge should be amended in the following manner:

(1) (1922) I. L. R. 1 Pat. 506.
(2) (1926) I. L. R. 5 Pat. 135; L. R. 52 I. A. 418.

1934.

SURAJMAL MARWARI v. HURO RAI.

that the mortgagee will be entitled to interest at the rate of 18 per cent. per annum from the 18th of September, 1926, to the date of the expiration of the days of grace fixed under the decree—such sum of interest not to exceed Rs. 6,500, and that from the expiration of the days of grace up to the date of realization the plaintiff-mortgagee will be entitled to interest at the rate of 6 per cent. per annum on the amount of the decree.

WORT, J.

The appeal, therefore, is allowed with costs. The days of grace will expire six months after the date of this judgment.

VARMA, J.—I agree.

Appeal allowed.

1935.

January, 4, 9.

APPELLATE CIVIL.

Before Wort and Varma, JJ.

RAMDEO PRASAD

v.

SHEONANDAN MAHASETH.*

Guradian and Wards Act, 1890 (*Act VIII of* 1890), *section* 31—*Guardian of infant—permission by Judge to raise loan—enquiry by lender, whether excused—order subsequently cancelled—money advanced when order in existence—cancellation, effect of.*

When an order of the court has been made authorizing the guardian of an infant to raise a loan on the security of the infant's estate, the lender of the money is entitled to trust that order, and he is not bound to enquire as to the expediency or necessity of the loan for the benefit of the infant's estate.

Ganga Prasad Sahu v. *Maharani Bibi*(1) and *Mahanth Mahabir Das* v. *Jamuna Prasad Sahu*(2), followed.

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*Appeal from Appellate Decree no. 167 of 1931, from a decision of F. F. Madan, Esq., I.C.S., District Judge of Muzaffarpur, dated the 2nd of August, 1929, reversing a decision of Babu Baidyanath Das, Munsif of Sitamarhi, dated the 23rd of February, 1929.

(1) (1884) I. L. R. 11 Cal. 379, P. C.

(2) (1928) I. L. R. 8 Pat. 48.