

## APPELLATE CIVIL.

*Before Mr. Justice Harrison and Mr. Justice Zafar Ali.*

BHARAT NATIONAL BANK, LTD., DELHI, AND  
OTHERS (DEFENDANTS) Appellants,

1923

Nov. 27

*versus*

BANARSI DAS (PLAINTIFF) Respondent.

Civil Appeal No. 399 of 1923.

*Interest—on Promissory Note made by a Bank—Whether chargeable with half-yearly rests in absence of express mention of it—practice of Banks—Interest entered in payee's pass book with half-yearly rests—Estoppel—liability of guarantors.*

Two promissory notes bearing interest at 11 per cent. were executed by the defendant Bank in January 1914, in favour of plaintiff. There was no mention of half-yearly rests. On 31st October 1918, certain Directors of the Bank gave a personal guarantee rendering themselves liable for the entire sum due on these promissory notes. The plaintiff brought the present suit against the Bank and the guarantors. The only points disputed were whether the Bank was bound to pay compound interest as claimed with half-yearly rests and whether, if the Bank be held liable, the guarantors were also liable. The Bank had throughout credited interest in its accounts with half-yearly rests and it had made the same entries in the pass book of the plaintiff.

*Held*, that it is the usual practice of Banks to make out their accounts at regular intervals of six months or a year, to add the amount of unpaid interest to the principal, and to bring forward the balance so calculated as the first item in the new account, and this was admittedly the practice of the defendant Bank.

Shastri's Book on the Law of Interest, pages 115, 119, Halsbury's Laws of England, Volume 21, page 43 and Hart's Law of Banking, page 192, referred to.

*Held also*, that the Bank had by its own action led the plaintiff to believe that they were crediting him with compound interest and their action in doing so led the plaintiff to allow

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the account to run on. The fact that the Bank periodically wrote up the plaintiff's pass book, as they did, debars them from now urging that this was merely a clerical mistake and that both parties understood that simple interest would be charged.

*Held further*, that as the guarantors were directors of the Bank and as such presumably cognisant of all that the Bank did and the method, in which it conducted its business, they were liable not only for what was due up to the 31st October 1918, but also for whatever is due on the promissory notes from the 31st October onwards and must pay the full compound interest.

*First appeal from the decree of Maulvi Barkat Ali Khan, Senior Subordinate Judge, Ambala, dated the 16th January 1923, ordering that the defendants do pay to the plaintiff the sum of Rs. 68,067-10-3 with costs on Rs. 81,209-7-4.*

GOKAL CHAND NARANG, for Appellants.

DEVRAJ SAWHNEY and D. C. RALLI, for Respondent.

The judgment of the Court was delivered by—

HARRISON J.—The facts of this case are that two promissory notes were executed by the Bharat National Bank in January 1914 for Rs. 15,000 and Rs. 85,000, respectively, with interest at 11 *per cent. per annum* in favour of *Rai Bahadur Lala Banarsi Das*. On the 31st October 1918 certain Directors of the Bank gave a personal guarantee rendering themselves liable for payment of the entire sum due on these promissory notes. *Rai Bahadur Lala Banarsi Das* has brought this suit against the Bank and the guarantors claiming Rs. 81,427-11-1. The execution of the promissory notes is admitted and the only points disputed are whether the Bank is bound to pay compound interest as claimed with half-yearly rests; and whether, if it be held that the Bank is liable to pay such interest, the guarantors are also liable and whether costs should be allowed on the entire sum.

After the institution of the suit a sum of Rs. 13,142-3-6 was paid by the Bank and this has been deducted from the total amount of the decree, though costs have been allowed on the amount stated in the plaint. The plaintiff has put in cross-objections claiming the interest which has been disallowed from the date of institution to the date of realisation.

The all important question is that of the compound interest. The promissory notes merely state that interest at 11 *per cent.* will be charged. The Bank, however, has throughout credited interest in its accounts with half-yearly rests, and, not only has it done so in its own accounts, but it has made the same entries in the pass book of the plaintiff. It is urged by the appellants that this was merely a clerical mistake, which was discovered by one of the Directors of the Bank after the suit had been instituted, and that they were fully entitled to make the adjustment they have made, and thereby reduce the amount outstanding by over Rs. 29,000. The defendants-appellants, rest their whole case on the wording of the promissory notes. They allege that it is quite usual for Banks in this country to insist on the insertion of a clause providing for the half-yearly rests and that the omission of such a clause points to a definite agreement made by the parties that there should be no such rests, and that simple interest would be charged throughout. On the other hand as laid down in Shastri's Book on the Law of Interest, pages 115 and 119, and also in Halsbury's Laws of England, Volume 21, page 43 and Hart's Law of Banking, page 192, it is the usual practice of Banks to make out their accounts at regular intervals of six months or a year, to add the amount of unpaid interest to the principal, and to bring forward the balance so calculated as the first item in the new account. Not only is this the common practice but it is admittedly

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the practice of the defendant Bank. What is infinitely more important however is that the Bank has by its own action led the plaintiff to believe that they were crediting him with compound interest and there can be no doubt in our opinion that their action in doing so has led him to allow the account to run on. The wording of the promissory notes does not exclude the charging of compound interest. It merely says that interest will be charged at 11 *per cent*. The defendant Bank has itself read this as meaning that compound interest would be charged on any amount not paid by due date and in our opinion the fact that they periodically wrote up the pass book of the plaintiff, as they did, debars them from now urging that this was merely a clerical mistake and that both parties understood that simple interest only would be charged.

We find, therefore, that the defendant Bank is liable to pay compound interest as claimed.

In the year 1918 the guarantors signed the following document:—“ We do hereby guarantee the payment by the Bank, to your goodself, of the entire sum remaining due to you under the Bank’s promissory notes.” This certainly renders them liable to pay any sum due on the 31st October 1918. The concluding portion of the guarantee runs as follows:—“ Failing this payment we agree to pay you personally whatever balance may be found due to you on the said date together with the interest as given in the promissory notes.” It is contended that these words excluded the charging of compound interest from the 31st October 1918.

Had the guarantors been strangers it might be argued that the amount for which they are liable is the amount found to be due on the 31st October 1918

on the promissory notes and simple interest on the same from that date forward. As, however, it is admitted that these guarantors were Directors of the Bank and as such presumably cognizant of all that the Bank did and the method, in which it conducted its business, we are of opinion that even from the 31st October onwards they are liable to pay whatever is due on the promissory notes.

On the question of costs it is admitted that no notice of suit was given and that Rs. 13,000 odd were paid at once. Under these circumstances we think that no costs should have been allowed on Rs. 13,142-3-6 and to this extent we reduce the amount of the decree.

On the cross-objections we consider that interest should have been allowed after institution until the date of realization and this we allow and we accept the cross-objections in so far as to allow this interest at 6 *per cent. per annum*. The costs of the plaintiff will be paid throughout by the defendant-respondents.

A. N. C.

*Appeal accepted in part.*  
*Cross-objections accepted.*

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