

APPELLATE CIVIL.

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*Before Mr. Justice Eforde and Mr. Justice Campbell.*

KIRPAL SINGH (DEFENDANT) Appellant.

*versus*

JIWAN MAL (PLAINTIFF) Respondent.

Civil Appeal No 2846 of 1925.

*Indian Interest Act, XXXII of 1839—Debt—agreement to pay at uncertain time—necessity for notice of claim to interest—Implication—from trade usage and circumstances.*

The defendant borrowed money from the plaintiff on an agreement to repay the sum "on demand up to two years".

*Held*, that the agreement was so ambiguous that it could not be regarded as providing a certain time for the payment of the debt; and therefore, in the absence of a demand in writing giving notice that interest would be charged, the plaintiff could not claim interest under the provisions of Act XXXII of 1839.

*London, Chatham and Dover Railway Company v. The South Eastern Railway Company* (1), followed.

*Held further*, that as no express promise to pay interest had been proved, and no implication could be drawn from trade usage or from the circumstances of the case, the plaintiff's claim to interest was unsupported either by English common law, or by the Indian Contract Act.

*Second appeal from the decree of J. K. M. Tapp, Esquire, Additional District Judge, Amritsar, at Lahore, dated the 10th August 1925, modifying that of Sayad Hafiz-ud-Din, Subordinate Judge, 3rd class, Amritsar, dated the 1st March 1924, by reducing the decretal amount, etc.*

SHAMAIR CHAND, for Appellant.

FAKIR CHAND, for Respondent.

## JUDGMENT.

FFORDE J.—The suit out of which this appeal has arisen was brought for the recovery of Rs. 1,332, being Rs. 900 principal and the balance interest, the principal sum having been advanced by the plaintiff to the defendant on the 11th February 1915. The trial Court held that both the principal and interest were due on foot of an agreement whereas the lower appellate Court has held that the principal sum was undoubtedly due but that the agreement to pay interest could not be proved to have been expressed in the contract. The lower appellate Court, however, has held that interest at 6 per cent. *per annum* may be awarded under the Interest Act, XXXII of 1839. The only question that arises for determination in this second appeal is whether the terms of the Interest Act can be held to apply to the debt sued upon. It is clear that neither under the common law nor under the Indian Contract Act can interest be claimed upon a debt unless there has been either an express promise to pay interest or such promise is to be implied from the usage of trade or other circumstances. In the present case the lower appellate Court has held that no express promise to pay interest can be proved, and it may be added here that no implication to pay interest from the usage of trade or other circumstances can be drawn from the facts of this case. The question therefore is, as I have already observed, whether interest upon the principal sum may be allowed under the terms of the Interest Act. The Indian Interest Act, XXXII of 1839, is a repetition of Lord Tenterden's Act 3 and 4 Will. IV, c. 42, s. 28, and provides that "upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think

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fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment." In the present case no demand was made in writing giving notice to the debtor that interest would be claimed, and accordingly interest can only be awarded under the provisions of this Act if the debt in question was under the instrument constituting it, payable at a certain time. The material part of the written instrument which the plaintiff relies upon is as follows:—"The agreement is that the sum will be paid on demand up to two years." Mr. Shamair Chand, who appears for the defendant, contends that these words do not express the debt to be payable at "a certain time" but expressed it to be payable only upon demand being made. Neither Mr. Shamair Chand, nor Mr. Fakir Chand who appears for the respondent, gave us any clear idea of what the words "the sum will be paid on demand up to two years," really mean. In the *London, Chatham and Dover Railway Company v. The South Eastern Railway Company* (1) in construing the same words in Lord Tenterden's Act, Lord Herschell L. C. observed in a case where the demand of payment was expressed to be "as soon after the 1st of June as possible and not later than the 15th of June" that "it is a little difficult to say that that is a time certain even as regards the 15th of June." In the present case the instrument itself is so am-

(1) (1893) 13 A. C. 429.

biguous that it seems to me impossible to hold that it provides a certain time for the payment of the debt. That being so, the plaintiff is not entitled to succeed in his claim to interest under the provisions of the Interest Act.

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I would accordingly accept the appeal to the extent of reducing the decretal amount from Rs 1,224 to Rs. 900 with interest at 6 per cent. per annum from the date of suit till realisation. As the appellant has succeeded upon the only question argued before us I would allow him the costs of the appeal.

CAMPBELL J.—I agree.

CAMPBELL J.

*Appeal accepted in part.*

V. F. E.

### APPELLATE CIVIL.

*Before Mr. Justice Fforde and Mr. Justice Campbell.*

KAHAN SINGH, ETC. (DEFENDANTS) Appellants

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*versus*

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GOPAL SINGH, ETC. (PLAINTIFFS) } Respondents.  
MST. BHOLI (DEFENDANT)

Civil Appeal No. 2244 of 1922.

*Custom—Alienation—ancestral property—gift by sonless proprietor to daughters—in presence of collaterals—Sainis—Hoshiarpur district—Riwaj-i-am.*

*Held*, that by custom among Sainis of the Hoshiarpur district a gift by a sonless proprietor of ancestral property to a daughter is valid only if she has rendered services to the donor, it not having been shewn that the entry in the *Riwaj-i-am* to this effect is incorrect or unreliable.

*Beg v. Allah Ditta* (1), and *Labh Singh v. Mst. Mango* (2), followed.

(1) 45 P. R. 1917 (P. C.). (2) (1927) I. L. R. 8 Lah. 281.