APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice, and Mr. Justice Agha Haidar.

AYA RAM-TOLA RAM (PLAINTIFF), Appellant

versus

BHAJAN RAM AND OTHERS (DEFENDANTS), Respondents.

1926

Nov. 16.

Civil Appeal No. 1513 of 1922.

Usurious Loans Act, X of 1918, section 3—Jurisdiction —conditions as to interest—12 per cent. per annum—*whether* excessive—*Compound interest to be paid in default—whether* substantially unfair.

Held, that the jurisdiction conferred by the Usurious Loans Act is confined to cases where both the conditions mentioned in section 3 of the Act are satisfied, namely, (1) that the interest is excessive and (2) that the transaction was, as between the parties thereto, substantially unfair.

Held further, that it is neither possible nor desirable to enunciate a fixed rule as to what is a reasonable rate of interest, but a stipulation for the payment of interest at twelve per cent. *per annum* cannot be called excessive, such as to attract the equitable jurisdiction of the Courts.

Held also, that a contract binding the debtor, in the event of his failing to pay interest at the end of the year, to pay compound interest at the same rate, is neither unusual nor unreasonable.

Balla Mal v. *Ahad Shah* (1), followed.

First appeal from the decree of H. F. Forbes, Esquire, District Judge, Dera Ghazi Khan, dated the 11th March 1922, directing the defendants to pay to the plaintiff the sum of Rs. 5,314.

HAR GOPAL and NANWAN MAL, for Appellant.

N. C. MEHRA and DEVI DAYAL, for Respondents.

(1) 124 P. R. 1918 (P. C.).

1926

AYA RAM-TOLA RAM v. BHAJAN RAM.

The judgment of the Court was delivered by—

Sir SHADI LAL C. J.—This appeal arises out of an action brought by the firm of Aya Ram-Tola Ram against the defendants Bhajan Ram and others who were members of a joint Hindu family. The claim was for the recovery of a certain sum of money on the basis of an account between the parties. The correctness of the account has been admitted by the defendants, and the dispute is narrowed down to the question whether they are entitled to any relief in respect of the stipulation for the payment of interest.

There is ample evidence on the record, and indeed it is conceded, that the defendants promised to pay interest on the loan at the rate of twelve *per cent. per annum;* but it is urged that the rate of interest was excessive and should be reduced. Now, section 3 of the Usurious Loans Act (X of 1918), which has been invoked on their behalf, empowers the Court to give relief to the debtor, if the case satisfies the following two conditions :—

(1) that the interest is excessive; and
(2) that the transaction was, as between the parties thereto, substantially unfair.

The principle on which the Statute is based is well known. Where a contract of loan is made which appears to be unconscionable, the Court has the power to refuse to enforce it in its entirety, and may open the transaction and direct the payment of such sum of money as may be fairly due with a reasonable rate of interest. The jurisdiction conferred by the Act is, however, confined to the cases in which both the conditions mentioned above are fulfilled.

In order to bring their case within the ambit of the Statute, the defendants contend that the stipulated

rate of interest was unusual and should, therefore, be held to be excessive. It is neither possible nor desirable to enunciate a fixed rule as to what is a reasonable rate of interest; but a stipulation for the payment of interest at twelve per cent *per annum* is ordinarily found in transactions of loans, and the rate cannot be called excessive, such as to attract the equitable jurisdiction of the Courts.

It is true that the contract requires the debtors to pay interest at the end of the year, and that in the event of default they are liable to pay compound interest at the same rate. A covenant of this description is, however, often embodied in transactions of loans and cannot be regarded as either unusual or unreasonable. It does no harm to a borrower who fulfils his promise by paying simple interest on the due date, and it comes into operation only if he breaks the contract. It is manifest that if he could not impeach the propriety of the transaction at the time when it was entered into, he cannot subsequently improve his position by his failure to perform the obligation undertaken by him. As observed by Their Lordships of the Privy Council in *Balla Mal* v. *Ahad Shah* (1), "there is nothing inherently wrong or oppressive in a lender's securing for himself compound interest after the borrower has for a considerable time neglected to pay the debt he owes or the interest accruing due upon it which he has contracted to pay. The borrower cannot acquire merit simply by breaking his contract. Bankers are, in fact, in this country in the habit, in the ordinary course of their business, of capitalising the interest accruing on overdrawn current accounts every six months, as long as a debit balance against the customer remains due."

(1) 124 P. R. 1918 (P. C.).

1926

AYA RAM-TOLA RAM v. BHAJAN RAM.

For the aforesaid reasons we are of opinion that the first condition prescribed by section 3 of the Usurious Loans Act has not been satisfied, and that the Court had no jurisdiction to interfere with the contract entered into by the parties. We accordingly allow the appeal and decree the claim with costs throughout.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice, and Mr. Justice Agha Haidar.

1926

Nov. 17.

BARKHA NATH (DEFENDANT), Appellant

versus

SHIV RAM AND ANOTHER (PLAINTIFFS) Respondents.

Civil Appeal No. 2615 of 1922.

Indian Registration Act, XVI of 1908, section 77—Refusal to register—what amounts to—whether suit lies—where Registrar returned the document holding he could neither register nor refuse to register the same.

On presentation by the plaintiff of a sale-deed for registration, the executant (a *Mahant* of a religious foundation), shortly after being served with notice, died; whereupon the Sub-Registrar returned the document to the plaintiff and wrote an order to the effect that he could neither register nor refuse to register the document, there being no representative of the deceased *Mahant*, nor any successor appointed. It was pleaded that the plaintiff's suit under section 77 of the Registration Act did not lie, because the order of the Sub-Registrar (as confirmed by the Registrar) did not *refuse* registration, but postponed it.

Held, that not merely the form, but the substance of the order, must be considered, and as neither the Sub-Registrar nor the Registrar had retained the document for further action to be taken at a future date their orders were tanta-