# APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Ranade.*

DAGDUSA SHEVAKDA'S AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* RA'MCHANDRA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1895. *July* 22.

*Hindu law—Interest—Dámdupat—Amount of interest allowed cannot exceed the balance of principal actually due at date of suit—Part payments of principal deducted.*

The rule of *dámdupat* limits the arrears of interest recoverable at any one time by the amount of principal remaining due at that time.

SECOND appeal from the decision of Ráo Bahádur N. N. Nánávati, First Class Subordinate Judge with Appellate Powers at Dhulia.

The plaintiffs sued to recover Rs. 150 principal and Rs. 37-8-0 interest in advance, in all Rs. 187-8-0, due upon a mortgage-bond dated 31st July, 1880.

The bond provided that the amount should be paid by weekly instalments of Re. 1-8-0. The first seventy-five instalments were duly paid.

The present suit was brought to recover the amount of the remaining fifty instalments, *viz.*, Rs. 75, together with Rs. 185 on account of interest calculated at the stipulated rate.

The defendant pleaded that the plaintiffs were entitled to recover Rs. 60 only on account of the unpaid instalments, and he contended that he could not recover more than the same amount as interest.

The Subordinate Judge passed a decree awarding Rs. 75 as principal and Rs. 150 as interest.

This decree was amended, in appeal, by giving as interest a sum equal to the amount of principal, *viz.*, Rs. 75.

Against this decision the plaintiffs preferred a second appeal to the High Court.

*Dáji A'báji Khare* for appellants:—According to the rule of *dámdupat* the amount of interest recoverable at any one time cannot exceed the principal sum. What is meant by the principal sum? It means the original amount of the debt, and not the balance of principal that may be due. The original text of Manu is thus translated by Mandlik at p. 104 of his work on Hindu Law:—

* Second Appeal, No. 558 of 1893.

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"Interest on money received at once must never be more than double the debt (that is, more than the amount of the principal paid at one and the same time)." In Kulluka's comment. on this text the word *múl* is used to denote principal, that is, the original sum lent and not the reduced amount of principal. Refers to *Dhondu* v. *Nárâyan*(1); *Nárâyan* v. *Satvâji*(2); *Kakarlapudi Sitárámráj* v. *Uppalapudi Jánakayya* (3).

*B. A. Bhágvat* (for respondent) :—The word *debt* in Manu means the money due, or existing obligation, and not the original loan. In *Dhondu* v. *Nárâyan*(1) it is held to mean the outstanding debt. Any other interpretation would defeat the object of the *dámdupat* rule, which was intended to relieve debtors from usurious contracts.

JARDINE, J. :—The rule stated in Manu, VIII, 151, is thus translated by Dr. Bühler :—"In money transactions interest paid at one time (not by instalments) shall never exceed the double of the principal." The learned writer adds the following in a note :—

"Gaut. XII, 31, 36, Vi, VI, 11—15. Yajnavalkya II, 39. The interest here intended is such which is not paid by instalments, but becomes due together with the principal. According to the commentators, the whole sum payable, *i.e.*, the interest, together with the principal, shall not exceed the double of the sum lent."

The above passage of Manu is translated by Colebrooke in para. 61 in his Chapter on Interest. I Colebrooke, Bk. I, Ch. II, section 3, along with many other sacred texts on the same matter.

It appears to me that no translator or commentator has noticed that the words *principal* and *debt* are ambiguous, and may refer either to an original amount or to the balance thereof presently due. The reported decisions of the High Courts have the same ambiguity. The sages of the Hindu law did not foresee every case that might arise; and probably left this question to be decided by Judges, who give weight to the general spirit of that law including the regard to custom and equity.

I have had the advantage of seeing the judgment written by my brother Ránade, and I concur in his impression that the Courts have been in the habit of interpreting the word "principal" as meaning

(1) 1 Bom. H. C. Rep., 47. (2) 9 Bom. H. C. Rep., 83.
(3) 1 Mad. H. C. Rep., 5.

the balance of principal unpaid at the time of suit. The case of *Nánchand* v. *Bápu Sáhel*[1] is, however, the only printed instance I can find; but the practice, as I understand it, has been enacted in the Dekkhan Agriculturists' Relief Act, XVII of 1879, section 13, clause (*g*).

For these reasons, I would confirm the decree with costs.

RA'NADE, J.:—The sole question at issue in this appeal is whether, in the case of a suit on an instalment bond, where the instalments paid have satisfied in part the principal claim along with interest, the arrears of interest claimable at any one time must, under the *dámdupat* rule, be limited to the principal balance due, or to the original principal of the bond.

The point is one of some importance at the present time, when it is in contemplation to extend the principle of the *dámdupat* rule, hitherto confined to Hindus in this Presidency, to all classes and to all parts of India as a measure of equitable relief to which the Courts are bound to give effect. A clear statement of this rule is found in *Dhondu* v. *Náráyan*[2], where after quoting Manu's text, Ch. VIII, v. 151, and the comments of Mayukha and Váchaspati Misra, the judgment goes on to state:—"The rule of Hindu law is simply this that no greater arrear of interest can be recovered at any one time than what will amount to the principal sum."

The question at issue in the present case is as to the precise meaning of the words "principal sum" in respect of a bond where the original principal claim has been partially satisfied by the payments made. The original text of Manu makes this clear. Ráv Sáheb Mandlik translates this text thus:—"Interest on money received at once must never be more than double the debt (that is, more than the amount of the principal paid at one and the same time)." Mandlik's Hindu Law, page 104. Colebrooke translates this same text in the same words. Colebrooke, Vol. I, p. 79. Mr. Khare referred to Kulluka's comment, where the words used are मूलवृद्धिः द्विगुणा भवति and mean that the principal increase becomes only double. There is nothing in these words to justify the contention that it is the original principal, and not the principal due when the arrears of interest accrue. The explanatory words in the translation of Manu's

(1) I. L. R., 3 Bom., 131. (2) 1 Bom. H. C. Rep., 47.

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text are quite clear. The principal payable at one and the same time is the limit of the increase then payable.

Mr. Khare's contention is apparently based on the head-note in the case of *Nárayan* v. *Satváji*[1], which states that the rule of Hindu law is that interest exceeding the principal sum lent cannot be recovered at any one time. The use of the word *lent* in the head-note is clearly unwarranted by any expressions in the judgment, where the words used are "By Hindu law the amount of interest recoverable at any one time cannot exceed the principal." The case of *Nánchand* v. *Bapu Sáheb*[2] is not exactly in point, because it only decided that the rule of *dámdupat* did not apply to Mahomedans. It, however, shows how the rule has been interpreted in the Courts of this Presidency. Both the lower Courts had applied the *dámdupat* rule, and in consequence only allowed 291 rupees interest, because the principal balance due on the bond sued upon was 291 rupees, though the bond itself was for 1,901 rupees, and the plaintiff in that case had claimed Rs. 374 as interest. This view also was given effect to in *Shri Ganesh Dharnidhar* v. *Keshavráv*[3]. The exclusion of the *dámdupat* rule in cases of mortgages, where the rents and profits have to be set off against interest and principal, and its limitation to cases where the account has to be taken only on one side, are also based on this same consideration—*Nathubhái* v. *Mulchand*[3]; *Rango* v. *Báláji*[4]; *Sádhu* v. *Ganu*[5]; *Shankarbáwa* v. *Bábáji*[6]; and *Dáji Gopál* v. *Dáji Hari*[7]. The provision of section 13 of the Dekkhan Agriculturists' Relief Act, which was intended to give effect to the *dámdupat* rule, has expressly recognized this same principle, and it allows interest balance only so far as it does not exceed the principal balance due.

The Madras High Court has placed a similar interpretation on this same rule of the law as administered in that Presidency—*Kakarlapudi Sitárámráj* v. *Uppalapudi Jánakayya*[8]. In this Madras case, part-payments had been made and credited in discharge of the principal, and the action was brought for the principal balance and for interest exceeding that balance, and though the lower Court had

(1) 9 Bom. H. C. Rep., 83.
(2) I. L. R., 15 Bom., 625.
(3) 5 Bom. H. C. Rep., A. C. J., 196.
(4) P. J. for 1886, p. 76.
(5) P. J. for 1887, p. 215.
(6) P. J. for 1881, p. 291.
(7) P. J. for 1873, p. 74.
(8) 1 Mad. H. C. Rep., 5.

decreed the excess interest, the High Court varied the decree by allowing interest equal to the principal balance only.

On a careful consideration of all these authorities, we feel satisfied that the lower Court of appeal has correctly applied the *dámdupat* rule in limiting the amount of the interest arrears to the principal balance due (Rs. 75), and awarding 150 rupees. A contrary interpretation would make this rule of equity, intended for the relief of debtors, press hard upon them in a way not contemplated by Hindu law.

We accordingly confirm the decree, and reject the appeal with costs.

*Decree confirmed.*

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## APPELLATE CIVIL.

*Before Mr. Justice Parsons and Mr. Justice Candy.*

1895. *July* 22.

CHAGANDA'S MAGANDA'S AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* GA'NSING VALAD ISHRA'M (ORIGINAL DEFENDANT No. 1), RESPONDENT.*

*Contribution—Mortgage—Sale of property subject to mortgage in execution of money decrees against mortgagors—Subsequent suit by mortgagee to recover his mortgage-debt by sale of part of mortgaged property only—Payment of mortgage-debt by holder of part of mortgaged property—Right on such payment to sue for contribution from other holders of the mortgaged property.*

The owner of a portion of property comprised in a mortgage who, in order to save his share from sale, has satisfied a decree obtained by the mortgagee on the mortgage against him, can exact contribution from the owner of another portion of the mortgaged property who was not a defendant in the mortgagee's suit.

*Jagat Nárain* v. *Qutub Husain*(1) followed.

SECOND appeal from the decision of Ráo Bahádur N. N. Nánávati, First Class Subordinate Judge with appellate powers at Dhulia.

Suit for contribution.

In 1884, six brothers mortgaged certain property (Surveys Nos. 19 and 28 and other lands) to one Bhán. Subsequently certain money decrees were passed against the mortgagors and in execution the

* Second Appeal, No. 715 of 1893.

(1) I. L. R., 2 All., 807.