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affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal."

It is clear that inasmuch as the order of Strachey, J., was not appealable under Chapter XLI of the Civil Procedure Code, it falls within the concluding provision of section 591, and consequently any error in it may be set forth as a ground of objection in the memorandum of appeal against Mr. Justice Russell's decree, and, in my opinion, this is so, though there may have been a right of appeal from the order under the Letters Patent, a point which for the purposes of my opinion I have assumed (but without deciding it) in the respondent's favour.

Attorneys for the appellants:—Messrs. *Ardesir, Hormusji and Dinsha.*

Attorneys for the respondents:—Messrs. *Little and Co.*

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy.

SUKALAL AND OTHERS, PLAINTIFFS, *v.* BAPU SAKHARAM, DEFENDANT.*

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Hindu law—Interest—Dam-dupat—Bond purporting to be executed in adjustment of a past debt—Principal for the purpose of dam-dupat is the amount of the bond.

In the case of a bond purporting to be executed in adjustment of a past debt, the principal for the purpose of the rule of *dam-dupat* is the amount of such bond, and not the balance of the unpaid principal actually advanced on an earlier bond.

Per JENKINS, C. J.:—Neither the texts, the commentaries, usages or the cases forbid the conversion by subsequent agreement of interest into capital, nor is there any such prohibition involved in the rule of *dam-dupat* as it has been formulated.

REFERENCE by Ráo Sáheb R. T. Kirtane, Subordinate Judge of Málegaon in the Násik District, in his Small Cause Jurisdiction under section 617 of the Civil Procedure Code (Act XIV of 1882).

The reference was made in the following terms:—

Plaintiffs sue to recover Rs. 46-15-0 due on a bond passed by the defendant for Rs. 28-8-0. The bond purports to be executed in adjustment of a past debt,

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though plaintiffs state that a fresh advance of 8 annas was made on the date of its execution. The rest of the consideration (Rs. 28) of the bond sued on is made up of interest (Rs. 14) and principal (Rs. 14) advanced to the defendant on an earlier bond executed on the 8th May, 1892. The sum claimed in the present suit exceeds the principal sum due from defendant on the earlier bond, and the well-known rule of *dam-dupat* lays down that no greater arrears of interest can at one time be recovered than the balance of principal due from a debtor.

The Subordinate Judge, therefore, submitted the following question :—

Whether, in the case of a bond purporting to be executed in adjustment of a past debt, the principal for the purposes of the rule of *dam-dupat* is the amount of such bond, or the balance of unpaid principal actually advanced to defendant on an earlier bond?

The opinion of the Subordinate Judge was that the principal for the purposes of the rule of *dam-dupat* was the principal or the balance of the principal actually advanced to a debtor.

Vasudev G. Bhandarkar (*amicus curiæ*) for the plaintiffs.

H. C. Koyaji (*amicus curiæ*) for the defendant.

JENKINS, C. J. :—This is a reference for our decision, under section 617 of the Code of Civil Procedure, of the question whether in the case of a bond, purporting to be executed in adjustment of a past debt, the principal for the purpose of the rule of *dam-dupat* is the amount of such bond, or the balance of unpaid principal actually advanced to defendant on an earlier bond. The question thus referred is expressed in terms more general than the section contemplates : we will accordingly limit our decison to facts set out in the statement. In our opinion the rule of *dam-dupat* does not preclude the plaintiffs recovering Rs. 49-15-0.

In support of the opposite view, reliance has been placed by Mr. Koyaji principally on the text of Gautama, "The principal can only be doubled by length of time after which interest ceases," and a text of Manu, VIII, 151, "In money transactions interest paid at one time (not by instalments) shall never exceed the double (of the principal)." This has been interpreted by the commentators to mean that the whole sum payable at one time, *i. e.*, the interest together with the principal, shall not exceed the double of the sum lent.

These texts do not, in so many words, forbid the capitalization of interest, but impose a limit on the amount of arrears recoverable. There are, however, texts which appear to deal precisely with this point. Thus Vrihaspati says: "After the time for payment has passed, and when the interest ceases on becoming equal to the principal, the creditor may either recover his debt or require a new writing in the form of *wheel-interest.*" The words here rendered "wheel interest" is *chakravriddhi,* which according to Wilson's Glossary has the meaning of compound interest or interest on interest.

The commentary by Jagannatha Tarkapanchanana on the words "*or require a new writing*" is "that is a written contract in the form of wheel-interest. Making the doubled sum the principal and stipulating interest afresh, he may require a new writing after cancelling the former note." Then, again, there is a text of Katyayana "Twice the sum lent should always be received by the creditor if the debt be of long standing; but if the debtor do not pay twice the principal when interest has ceased, the creditor may again exact an agreement for interest." On this text Jagannatha says: "In that case the creditor may again exact interest; making the former debt together with interest his present principal, he may stipulate interest afresh; and this is the wheel-interest mentioned by Vrihaspati. Such wheel-interest is of three kinds as declared by Manu." Then, again, Manu, VIII, 154, 155, has a bearing on the point, for it is there said: "154. He who cannot pay the debt *at the fixed time,* and wishes to renew the contract, may renew it in writing, with the *creditor's* assent, if he pay all the interest then due;

"155. But if for some *unavoidable accident* he cannot pay the whole interest, he may insert as *principal* in the renewed contract so much of the interest accrued as he ought to pay." (See Colebrooke's Digest, Vol. I, Ch. VI, Sec. 257, p. 243.)

And then, again, there is a text of Vrihaspati as follows:—"As the original debt, together with the *arrear* of interest, becomes a *new* principal, when wheel interest is received after the debt is doubled, so does the use of a pledge *forborne* become a *new* principal in a similar case." (Colebrooke, Vol. I, Ch. VI, Sec. 259, p. 245.)

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Other texts may be referred to as contemplating compound interest. Thus "special forms of interest are compound interest, periodical interest"—Gautama XII, 34 (Sacred Books of the East, Vol. II, p. 239).

On the other hand, in Manu, VIII, 153, it is said: "Let him not take interest beyond the year, nor such as is unapproved, nor compound interest, periodical interest, stipulated interest and corporal interest"—Sacred Books of the East, Vol. XXV, 153.

From the note to that text, however, it would seem that "according to '*some*' quoted by Medhatithi and Narada the last four kinds of interest are not forbidden."

It will thus be seen that according to these texts there is a preponderance of authority in favour of the view that interest can be capitalized.

We now pass on to consider the Mayukha.

In chapter V, section I, para. 7, it is said in explanation of the previous discussion on loans: "Narada:—'of interest on loans this is the paramount (rule), but the rate customary in the country where the debt was contracted may be different.' *Sarvabhauma*, *i. e.*, paramount or universal. And this relates to a debt, doubled, or more than doubled by interest in a single transaction; for if at a different time, a fresh transaction be entered into with a different person or even with the same person with a less or greater amount and the like, in such a case, even the highest allowable interest may receive addition." This shows that the rule of *dam-dupat* does not interfere with a fresh transaction, and to that extent yields to an agreement between the parties.

This is made still clearer by a passage in the section on recovery of debts, Ch. V, Sec. IV, para. 5. "Brihaspati (says): The creditor may (either) recover a debt, the interest on which has ceased (owing to) the limit having been exceeded, or (he) may obtain a writing allowing compound interest. *Purnavadhau* (means) when doubling or the like has taken place. Hence the possibility of interest ceasing. *Udgrihayet* (means) should take. *Chakravriddhi* means the calculation of interest on the interest added to

the principal." Stopping here, then, it seems that capitalization of interest is supported by the texts of the codes, it is sanctioned by the Mayukha, and Jagannatha's opinion is in its favour. Turning to usage, a sanctioned source of law, Steele in his treatise on the Laws and Customs of Hindoo Castes at p. 265 says: "Compound interest is not usually specified, but from the custom of making up accounts at Deepoulee, and entering the balance of principal and interest as a total sum bearing interest in a new account, it is in fact paid." From what follows, however, it would seem that it is liable to be struck off by panchâits if the circumstances of the debtor so demand.

It only now remains to be seen whether there is in the cases anything that would stand in the way of the plaintiff's claim.

Mr. Koyaji has relied on two cases for that purpose—*Dagdusa* v. *Ramchandra* [1] and *Narayan* v. *Satvaji* [2], but we find in neither of these cases any principle that supports his contention. On the other hand, in *Dhondu* v. *Narayan*[3] the rule of *dam-dupat* is expressed in terms which would not forbid the capitalization of interest, and it is on the rule so expressed that the two cases mentioned by Mr. Koyaji professes to proceed. In the case reported in the first Bombay High Court Reports there was an agreement for conversion of interest into principal, and though effect was not given to it, the ground of the decision was, not that the agreement contravened any rule of Hindu law, but that the agreement was not properly stamped. In *Ramconnoy* v. *Johur Lall Dutt* [4], Mr. Justice Wilson had both these cases brought to his attention, and the bent of his opinion seems to have been that the rule of *dam-dupat* has properly nothing to do with the legality or illegality of any contract, but is rather a rule of limitation. If this be the true view, it furnishes a complete answer to the question under consideration. It is, however, unnecessary to express any opinion on this: it is enough to say in no case does it ever seem to have been suggested that arrears of interest cannot by a subsequent adjustment be capitalized, nor is there any principle deducible from the cases brought to our notice which involves such a result. To sum up, neither the texts, the comment-

(1) (1895) 20 Bom., 611.
(2) (1872) 9 Bom. H. C. R., 83.
(3) (1863) 1 Bom. H. C. R., 49.
(4) (1880) 5 Cal., 867.

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aries, usage or the cases forbid the conversion by subsequent agreement of interest in arrear into capital, nor is any such prohibition involved in the rule of *dam-dupat* as it has been formulated. We do not overlook the text in Manu which condemns compound interest. It no doubt seems to be in conflict with other and more explicit texts, but the difference may be more apparent than real. We are not in a position to speculate on the full force of the original, but it may be that the text in Manu is directed against compound interest under an antecedent agreement and was not dealing, as the other texts are, with a subsequent agreement after the accrual of arrears. This distinction is not fanciful, and in proof of this we need only allude to the English rule of equity, which at one time prevailed, and according to which compound interest was allowed on a subsequent settlement of the balance of an account, though it was disallowed under an *a priori* agreement—*Eaton* v. *Bell*[1]; *Ex parte Bevan*[2]. We of course do not rely on this rule as any authority for the decision of the present case, but as illustrating an apposite legal principle. It is for these reasons that we are of opinion that the rule of *dam-dupat* furnishes in this case no defence to the plaintiffs' claim, and we would so answer the question referred to us for decision.

Order accordingly.

(1) (1821) 5 B. and Ald., 34. (2) (1803) 9 Ves., 223.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy.

1899.
November 21.

DIWALIBAI, PLAINTIFF, *v.* SADASHIVDAS, DEFENDANT.*

Small Cause Court—Provincial Small Cause Courts Act (IX of 1887), *Secs.* 27 *and* 33—*Decree passed by a Subordinate Judge invested with the jurisdiction of a Small Cause Court—Finality of such decree—Appeal—Civil Procedure Code (Act XIV of* 1882), *Secs.* 622 *and* 646A—*Reference.*

A Subordinate Judge, invested with the jurisdiction of a Court of Small Causes, tried a suit under his Small Cause Court powers, and passed a decree in plaintiff's favour. The defendant appealed against this decree, and the appellate Court, being of opinion that the suit was not of a nature cognizable

* Civil Reference, No. 12 of 1899.