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the same conclusion as Mr. Justice Batty, though by a somewhat different road.

If there were any construction of the text laid down by authority binding on the Courts of Bombay, or if there were any established practice or usage in the application of the text, their Lordships would follow it without hesitation, though it might not commend itself to their judgment. But no such authority has been referred to, and there is no evidence of any such practice or usage. Their Lordships therefore are at liberty, and are bound, to act on the opinion which they have formed, and will humbly advise His Majesty that the appeal be allowed, and that the order of the High Court of Bombay (Appeal side), dated the 11th December, 1903, be discharged, and the decree of Mr. Justice Batty, dated the 21st February, 1903, be restored, and that the respondents do pay to the appellant the costs of their appeal in the High Court. They will also pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellant: *Messrs. Ashurst, Morris, Crisp & Co.*

Solicitors for the respondent Hunsraj Morarji: *Messrs. Payne* and *Lattey.*

Solicitors for the respondent Bai Monghibai: *Messrs. Rawle, Johnstone & Co.*

J. V. W.

REFERENCE FROM THE COURT OF SMALL CAUSES.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

NUSSERWANJI COWASJI SHROFF (PLAINTIFF) *v.* LAXMAN BHIKAJI (DEFENDANT).*

1906. *January* 12.

Hindu Law—Interest—Damdupat—Interest accrued due not affected by the rule of damdupat.

Plaintiff advanced Rs. 714 to the defendant. The whole of this sum was repaid by the defendant. The plaintiff then sued to recover Rs. 33-9-2, being the amount of interest over the amount from the date of the loan to the date of

* Small Cause Court reference in Suit No. 16596 of 1905.

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its repayment. The defendant raised the plea of *damdupat*, alleging that no sum was due as principal at the date of suit, so none could be recovered by way of interest.

Held, that the claim should be allowed; since the rule of *damdupat* had no application to right that has already accrued.

The rule of *damdupat* does not divest rights that have accrued; it merely limits accruing rights.

A suit against a Hindu debtor for interest actually and legally accrued is not barred merely because the principal sum lent has been paid off.

THIS was a case referred to the High Court by R. M. Patel, Chief Judge of the Bombay Court of Small Causes, and by A. K. Donald, Second Judge of the same Court, under section 69 of the Presidency Small Cause Court Act, XV of 1882.

The reference was as follows:—

"I beg respectfully to submit the following question and invite their Lordships' opinion on it.

"Whether a suit can lie against a Hindu debtor for arrears of interest only, when the whole of the principal sum lent has been paid off, and the creditor has admittedly appropriated the sums repaid towards the payment of the principal only?

"In the above suit the creditor had advanced Rs. 714 and the whole sum was repaid to a pie. The suit was to recover Rs. 33-9-2, being amount of interest in arrears at one and half per cent. per month, or 18 per cent. per annum. Nothing out of the sums repaid was appropriated by the plaintiff for interest. For the defence it was argued that under the Hindu rule of *damdupat* 'no greater arrear of interest can be recovered at any one time than what will amount to the principal sum' (*Dhondu* v. *Narayan*, 1 B. H. C. R. 47) and that the expression 'principal sum' meant 'the balance of the principal lent, and not the original amount advanced' (*Dagdusa* v. *Ramchandra*, 20 Bom. 611); and as the balance of the principal lent was nil, the interest claimed could not be allowed.

"The learned Second Judge gave a decree for the sum of Rs. 33-9-2 for interest. The defendant applied to the Full Court and a rule was granted. At the hearing the learned Second Judge adhered to his judgment, and thought the rule should be dismissed. I however considered that the question before the Court was concluded by authority, and the Full Court was bound to act upon the judgment of Ranade, J., in *Dagdusa* v. *Ramchandra*, 20 Bom. 611. I was therefore of opinion that the rule should be made absolute, and the interest claim dismissed.

"I may say that for a number of years this Court has uniformly followed the ruling as expounded in *Dhondu* v. *Narayan* and explained in *Dagdusa* v. *Ramchandra*. The amount of interest claimed in a suit where the defendant

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was a Hindu has not been allowed to exceed the balance of the principal sued for, it followed that where the balance of principal was nil, no interest could be allowed. * * * * * * *

"The learned Second Judge seemed to think from the opening sentence of the judgment at page 613 of 20 Bom. that Mr. Justice Ranade limited or restricted the application of the rule of *damdupat* 'to loans at interest when the payments made have satisfied in part the principal claim along with interest.' The opening sentence however refers only, it is submitted, to the facts of the case then before the Court in Appeal. If otherwise, it would lead to an awkward result, that where the plaintiff honestly admitted there were Rs. 5 or Re. 1, as the case may be, due to him for balance of principal he would get only Rs. 5 or Re. 1 for interest, but if he said that there was no balance due for principal he would get the whole amount of interest setting aside the *damdupat* rule.

"The learned Judge also thought it would be inequitable to allow defendant to deprive plaintiff of recovering interest at the commercial rate. But 18 per cent. interest has never been the recognised commercial interest in the City."

This reference came up for disposal before Jenkins, C. J., and Batty, J.

There was no appearance on either side.

JENKINS, C. J :—The rule of *damdupat* does not (in my opinion) divest rights that have accrued; it merely limits accruing rights.

If therefore the interest claimed was not at its accrual barred by the rule of *damdupat*, but actually became a debt due to the plaintiff, the subsequent payment of the principal sum in respect of which it accrued would not cancel or avoid the debt of interest.

To hold otherwise would lead to the result that if A owed B Rs. 1,000 for principal and Rs. 1,000 for interest A by paying B Rs. 1,000 and intimating that the payment was to be applied to the discharge of the principal, would deprive his creditor of his right to the Rs. 1,000 due to him in respect of interest.

Reliance has been placed in the reference on the decision in *Dagdusa* v. *Ramchandra*[1] but in the principle there laid down there is nothing opposed to the view I have expressed.

Mr. Justice Jardine, it is true, says "I have had the advantage of seeing the judgment written by my brother Ranade, and I concur in his impression that the Courts have been in the habit of interpreting the word 'principal' as meaning the balance of

(1) (1895) 20 Bom. 611.

principal unpaid at the time of suit." But it is clear that Jardine, J., did not intend to lay down anything at variance with the principle adopted by Ranade, J.

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Then what is that principle? It is, I think, to be found in that part of his judgment where, dealing with Mr. Khare's reference to Kulluka's comment, he says "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."

Obviously the learned Judge takes the limit imposed by the rule of *damdupat* to be the principal due *when the arrears of interest accrued*, and not as Jardine, J., supposed "the balance of principal unpaid at the time of suit." The variation introduced by Jardine, J., was immaterial for the purposes of the case then before the Court, as the principal sum on which the arrears of interest accrued still remained unpaid and undischarged at the date of the suit.

I would, therefore, answer the question submitted for our opinion by saying that a suit against a Hindu debtor for interest actually and legally accrued is not barred merely because the principal sum lent has been paid off.

R. R.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Russell.

BAI DAHI (ORIGINAL APPLICANT), APPELLANT, *v* HARGOVANDAS KUBERDAS (ORIGINAL OPPONENT), RESPONDENT.*

1906. *February* 2.

Civil Procedure Code (Act XIV of 1882), section 198—Judgment to be pronounced in open Court or on some future day—Notice to the parties or their pleaders or recognized agents—Practice in the Mofussil Courts strongly disapproved of.

Section 198 of the Civil Procedure Code (Act XIV of 1882) provides that "the Court, after evidence has been duly taken and the parties have been duly heard either in person or by their respective pleaders or recognized agents,

* Appeal No. 98 of 1904.