ORIGINAL CIVIL.

Before Mr. Justice Pratt.

KERING RUPCHAND AND Co., PLAINTIFFS *v.* A. S. B. BAYLEY, DEFENDANT.*

1919. *July* 22.

Interest—Bond—Consideration—Interest in advance added to principal—Total amount made payable by instalments—Scheme of the bond providing in effect for progressive increase in the rate of interest—Transaction "substantially unfair" within the meaning of the Usurious Loans Act (X of 1918) section 3 (1)—Jurisdiction of Court to consider the transaction in an ex parte *suit.*

On the 7th September 1918, the defendant executed a bond for Rs. 8,400, in favour of the plaintiff, a professional money-lender. The consideration of the bond was a cash-advance of Rs. 5,000 by the plaintiff and Rs. 3,400 interest thereon which was calculated in advance for thirty-four months at the rate of 2 per cent. per mensem. The total amount of Rs. 8,400 was made payable under the bond in thirty-four instalments. The first three instalments had been recovered by the plaintiff by a suit instituted in the Court of Small Causes, Bombay. The defendant having made default in respect of the next six instalments from January to June 1919, the plaintiff sued to recover Rs. 1,500 the amount due under the same. The defendant did not appear.

Held, (1) that though the suit was *ex parte*, the Court had under section 3 (1) of the Usurious Loans Act, 1918, jurisdiction to consider the merits of the transaction between the parties.

(2) that inasmuch as the scheme of the bond was that the interest on the whole sum of Rs. 5,000 should be continued to be paid though the principal was being progressively discharged by instalments, the interest charged in the bond was "excessive" and the transaction "substantially unfair" within the meaning of section 3 (1) (*a*) and (*b*) of the Usurious Loans Act, 1918.

(3) that the plaintiff was not entitled to claim interest on sums which he actually received and which accordingly went towards part-satisfaction of the principal amount.

Samuel v. *Newbold*[1], referred to.

SUIT on a Bond.

The plaintiffs, Kering Rupchand and Company were a firm doing business as Shroffs and Commission

* O. C. J. Suit No. 1591 of 1919.

[1] [1906] A. C. 461.

1919.

KERING RUPCHAND & Co. v. BAYLEY.

Agents in Bombay and Poona. On 7th of September 1918, the defendant, A. S. B. Bayley, executed at Lahore a bond for Rs. 8,400 in favour of the plaintiffs. The bond ran as follows :—

I, A. S. B. Bayley, Assistant Accountant General at present stationed at Lahore, have borrowed and received from Messrs. Kering Rupchand and Company, Bankers, the sum of Rupees eight thousand four hundred, Rs. 8,400 only, i.e., cash received Rs. 5,000 (Five thousand) and interest at 2 per cent. per mensem, namely, Rs. 100 per month, added for 34 months on Rs. 5,000 (Five thousand) which amount of Rs. 8,400 (Eight thousand and four hundred) I promise to repay by monthly instalments of Rs. 250 (Two hundred and fifty) commencing from 10th October 1918 for 33 months and the remaining balance on the 34th month. If I fail to pay any four consecutive instalments I agree to pay the whole amount which will become due and payable on demand with interest at 2 per cent. per mensem from the date of such default. Money to be paid in Bombay, Poona or wherever the said firm of Messrs. Kering Rupchand and Co. may require.

(Sd.) A. S. B. BAYLEY,
Indian Finance Department.

To facilitate recovery of the said instalments as and when each fell due the defendant handed to the plaintiffs 7 post-dated cheques for Rs. 250 each drawn in plaintiffs' favour upon the defendant's Bankers, The Alliance Bank of India, Limited. The defendant promised to send in more cheques at some future dates but failed to do so. The plaintiffs presented the said cheques for payment at their respective due dates but they were returned dishonoured.

On the first three instalments becoming due and payable and on the defendant failing to pay the same, the plaintiffs filed a suit against the defendant in the Court of Small Causes at Bombay, being Suit No. 713 of 1919 and obtained a decree for Rs. 912-7 annas including costs. The plaintiffs subsequently recovered that amount from the defendant.

On 14th May 1919, the plaintiffs through their attorneys called upon the defendant to pay to their

attorneys in Bombay the amount due in respect of the further 5 instalments amounting to Rs. 1,250 but the defendant failed to comply with the requisition. Another instalment since the date of the said notice having become due the plaintiffs filed the present suit to recover Rs. 1,500.

Leave under the Letters Patent was duly obtained, as the defendant at the date of the suit was stationed at Bolaram in the Deccan in the territories of His Highness the Nizam of Hyderabad.

The suit was filed as a Short Cause on 6th June 1919.

D. A. Ghaswalla, for the plaintiffs.

The defendant did not appear at the hearing.

PRATT, J.:—In this suit, the plaintiff, a Poona money-lender, seeks to recover on a bond executed by the defendant on the 7th of September 1918. The consideration of the bond is a cash advance of Rs. 5,000 and the obligor agrees to repay Rs. 8,400, i.e., Rs. 5,000 principal and Rs. 3,400 interest. The interest is assessed at 2 per cent. per mensem, i.e., Rs. 100 a month, for Rs. 5,000; and it is calculated in advance for thirty-four months. The total amount of Rs. 8,400 is then repayable in thirty-three instalments of Rs. 250 and one 34th instalment of Rs. 150. Thus the principal is repaid in thirty-three instalments of Rs. 150 and one instalment of Rs. 50 and the interest is repaid in thirty-four instalments of Rs. 100.

The first three instalments have been recovered by a suit in the Court of Small Causes. The present suit is for six instalments from January to June 1919.

The defendant does not appear but, though the suit is *ex parte*, the Court has, under section 3 (1) of the Usurious Loans Act, 1918, jurisdiction to consider the merits of the transactions.

1919.

KERING RUPCHAND & CO. v. BAYLEY.

The bond professes to charge interest at 2 per cent. per mensem but the scheme of the bond is that the interest on the whole sum of Rs. 5,000 should continue to be paid at this rate though the principal is being progressively discharged by instalments. The obligor of the bond, therefore, continues to pay interest on money which he has actually repaid. This provision seems to me altogether unconscionable and unfair. Moreover, the effect of it is that though at the end of the first month the interest paid is at the rate of 2 per cent. per mensem yet this rate progressively increases until at the end of the 33rd month Rs. 100 interest is paid for a balance of Rs. 200 or at the end of the 34th month Rs. 100 interest is paid for a balance of Rs. 50. The rates of interest at the end of the 33rd and 34th months work out to the preposterous rates of 50 per cent. per mensem and 200 per cent. per mensem.

Under the Act, the Court may reopen the transaction and relieve the debtor of all liability in respect of excessive interest, if two conditions are fulfilled. These are that the Court has reason to believe (*a*) that the interest is excessive, and (*b*) that the transaction was as between the parties thereto substantially unfair.

On the first point, there can of course be no doubt. As to the second, it may be said that the defendant is a member of the Indian Finance Department and that he must have understood the terms of the bond and that his agreement is evidence that the transaction was not unfair. But the explanation to section 3 enacts that interest may of itself be sufficient evidence that a transaction was substantially unfair. The Legislature has adopted the view of Lord Loreburn in *Samuel* v. *Newbold*[1], that excess of interest may in itself rebut any presumption of reasonableness arising from the

(1) [1906] A. C. 461.

agreement of the party. Moreover, I have already found that the transaction which involves payment of interest on money, which in fact has been repaid, is substantially unfair. I therefore think this is a fit case for reopening the transaction between the parties and giving relief in respect of excessive interest.

I do not and cannot disturb the transaction so far as it has been concluded by the decree of the Small Causes Court in regard to the first three instalments. As regards the six instalments in suit there is no occasion to disturb the provision for repayment of the principal by instalments of Rs. 150 per mensem.

The loan was made on personal security and I may take it that the rate of 2 per cent. per mensem was reasonable in view of the risk incurred. But the progressive increase of this rate and the provision which makes money chargeable with interest after it has been repaid, is both excessive and substantially unfair. I, therefore, disallow interest on sums actually repaid. This will not make much difference in the present suit but will make a considerable reduction when the account comes to be taken of the future instalments. If the account were taken in this way, the interest chargeable on the six instalments in suit would not be Rs. 100 per mensem but would be reduced as follows :—

Instalment.	Principal unpaid.	Interest at 2 per cent., per mensem.
January	4,550	91
February	4,400	88
March	4,250	85
April	4,100	82
May	3,950	79
June	3,800	76
		501 instead of 600.

1919.

Kering Rupchand & Co. v. Bayley.

But as no instalment of principal has been paid, the plaintiff is entitled to 2 per cent. per mensem on Rs. 4,550 due in January.

Decree, therefore, for the plaintiff for Rs. 900 interest at 2 per cent. per mensem on Rs. 4,550 from the 10th of January 1919 till judgment. Costs and interest on judgment at 6 per cent.

Solicitors for the plaintiffs: Messrs. *Khamballa & Co.*

The defendant did not appear.

Decree accordingly.

G. G. N.

ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

1919. *July 29.*

JIVRAJ BALOO SPINNING AND WEAVING Co., LTD., PETITIONERS AND APPELLANTS *v.* CHAMPSEY BHARA & Co., RESPONDENTS.[°]

Award—Petition to set aside an award—Error of law patent on the face of the award—Contract of sale and purchase of cotton—The Bombay Cotton Trade Association, Rules 13 and 52—Seller committing breach of contract cannot claim damages against buyer—Arbitrators have no jurisdiction to award damages to defaulting seller—Illegality of the award.

The respondents agreed to sell to the appellants 200 bales of cotton of specified sample under two contracts which were subject to the Rules and Regulations of the Bombay Cotton Trade Association, Ltd. The respondents tendered cotton against the said contracts, and on surveys being held at the instance of the appellants the arbitrators held that the cotton tendered was inferior in quality and gave allowance of Rs. 10-8-0 per candy. The arbitrator's award was confirmed on appeal by the Appeal Committee. Rule 52 of the Association provided that if the final award for inferiority of quality be in excess of Rs. 5 per candy, " the buyer shall have the option either to take the cotton at the allowance fixed by the arbitrators or the Appeal Committee, or upon giving notice in writting to the seller and original tenderer to refuse the

[°] Appeal No. 29 of 1919.