

give interest at the larger amount. They cited the cases of *Peetambur Chatterjee v. Kaleechurn Roy* (1), *Raskessur Surmah v.*

1873

BICHOOK
NATH PANDAY
v.
RAM LOCHUN
SINGH.

(1) *Before Mr. Justice Bayley and Mr.*

Justice E. Jackson.

The 1st December 1870.

PEETAMBUR CHATTERJEE (PLAINTIFF) v. KALEECHURN ROY AND ANOTHER (DEFENDANTS).*

Interest, Rate of—Bond payable by Installments—Penalty.

Baboo Bamachurn Banerjee for the appellant.

Messrs. G. A. Twidale and H. A. Mendies for the respondents.

THE judgment of the Court was delivered by

JACKSON, J.—This was a suit to recover a sum of Rs. 700 lent upon an agreement to the effect that it should be repaid with interest at 8 annas *per cent. per mensem*, by instalments of Rs. 100 in the month of Falgoun (11th February to 12th March) each year from 1268 to 1276 (1862 to 1870); the remainder to be paid in 1277 (1871). There was also a clause in the agreement that, if in four years these instalments were not paid, the interest to be paid on the Rs. 700 would be at the rate of Rs. 1 *per cent. per mensem*. The plaintiff brought this suit demanding interest at the higher rate, on the allegation that for five or six years after the money had been lent, no instalment was paid as agreed upon.

Both the Courts below have dismissed the plaintiff's claim to higher interest than 8 annas *per cent.* Both have come to the conclusion that the stipulation as to the higher percentage was a penalty, and the plaintiff had no sufficient ground to recover at that rate. It is upon this ground that this special appeal has been preferred to this Court, and it is urged that the higher percentage was clearly due under the express terms of the agreement between the parties.

On the part of the respondents, we have been referred to a decision of this Court, in *Boley Dohay v. Sideswar Rao Baboo Roy Kur* (a), in which it was held that where a smaller sum is secured by a larger sum, that larger sum may be looked upon as a penalty. In that case, the money had been lent at the rate of 1 *per cent. per mensem*, and there was a stipulation that, if a certain number of instalments were not paid, the whole amount would be considered to have lapsed, and the loan would bear interest at the rate of 10 *per cent. per mensem*. We think that the facts of that case are very different from those of this, and the question whether the higher rate of percentage should be looked upon as a penalty or not depends upon the circumstances of the case. Ten *per cent. per mensem* is an extraordinary high rate of interest, and the result of that stipulation in the bond was that the recovery of the amount was considered so doubtful, that an interest in the sum of Rs. 5,500 was sold for Rs. 800. This case in no way seems to agree with that case. In this case, the terms granted to the defendants at first were below the ordinary terms on which money is usually lent in this country, and it was almost a favor shown to the defendants that such terms were granted; and the penalty was not that any excessive rate should be paid, but that the ordinary rate at 1 *per cent.* should be paid. There was also in this case other landed security for the payment of the money, and it does seem if the meaning of the parties solely was that, if any delay occurred in the repayment of the money, the lender should receive interest at the ordinary rate of 1 *per cent. per mensem*.

We set aside the decision of the lower

* Special Appeal, No. 537 of 1870, from decree passed by Subordinate Judge of Beerbhoom, dated the 12th February 1870, modifying a decree of the Sudder Munsiff of that district, dated, the 18th September 1869.

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Kaleekanath Surmah (1), Shah Makhantal v. Srikrishna Sing (2), and Mussamut Sohodea Beebee v. Baboo Deendyal Lall (3).

Courts, and decree the plaintiff's suit with all costs with reference to the above remarks. A decree will be drawn up in accordance with the judgment above given.

(1) *Before Mr. Justice Norman and Mr. Justice E. Jackson.*

The 7th May 1869.

RASHESSUR SURMAH (DEFENDANT) v. KALEEKANATH SURMAH AND ANOTHER (PLAINTIFFS).*

Interest, Rate of—Bond payable by Instalments.

Baboo *Obhoy Churn Bose* for the appellant.

Baboo *Mohini Mohun Roy* for the respondents.

The judgment of the Court was delivered by

NORMAN, J.—It is clear that there is no ground for this appeal.

The first point taken is that the bond of Rs. 800, upon which the suit of brought, was given to the two plaintiffs, and that the two plaintiffs had advanced different sums making up the amount of Rs. 800, and that therefore having separate interests in the money to be recovered, they could not one jointly. But if the defendant has, for any reason, given a bond to both plaintiffs jointly for the entire sum borrowed, he cannot raise any objection of this nature. The plaintiffs can settle their respective rights in the money to be recovered amongst themselves. It is a matter with which the defendant has no concern. The plaintiffs are not suing for the original loans for the sums separately advanced by each of them, but they are suing jointly for the amount specified in the bond executed by the defendant to them jointly.

It is also objected that the rate of

interest decreed, namely, Rs. 2-8 *per cent. per mensem.*, is exorbitant. But the lower Court was justified in giving interest at the rate stipulated in the bond down to the date of decree. In ordinary business transactions when money is taken on loan, and it is stipulated that interest is to be paid at a certain rate, that interest represents the consideration agreed to be paid by the borrower to the lender for the use of the money or forbearance to enforce repayment. But parties usually understand that, as long as the contract continues in force, all the terms of it will continue, and amongst others, the terms as to the rate of interest for the use of the money on loan. But after the date of the decree, a new state of circumstances arises. The contract ceases to be merged in the decree, and the plaintiff recovers under that decree such interest, as according to the course and practice of the Court, is allowed on debts for which the creditor has the security of its decree. We think that the decree of the lower Court should be modified to the extent of reducing the rate of interest to 12 *per cent. per annum* from the date of decree.

For the rest, the appeal is dismissed with costs payable to the respondents.

(2) 2 B. L. R., P. C., 44:

(3) *Before Mr. Justice L. S. Jackson and Mr. Justice Paul.*

The 13th July 1871.

MUSSAMUT SOHODEA BEBEE (DEFENDANT) v. BABOO DEENDYAL LALL (PLAINTIFF).†

Interest, Rate of—Bond—Penalty.

THIS was a suit to recover Rs. 3,285 as principal and interest due on a bond

*Special Appeal, No. 2946 of 1868, from a decree of the Deputy Commissioner of Sibsagar, dated the 27th June 1868, affirming a decree of the Moonsiff of that district, dated the 30th November 1867,

† Special Appeal, No. 428 of 1871, from a decree of the Officiating Judge of Gya, dated the 8th February 1871, reversing a decree of the Subordinate Judge of that place, dated the 14th June 1870.