

[38] *The 10th January, 1853.*

PRESENT: J. DUNBAR, ESQ., *Judge*, AND A. J. M. MILLS, AND
R. H. MYTTON, ESQRS., *Officiating Judges.*

CASE NO. 288 OF 1851.

Regular Appeal from the decision of Roy Sunkur Lall, Principal Sudder
Ameen of Patna, dated 20th March, 1851.

BABOO BELASBEHAREE (*Defendant*), *Appellant*, v. BEBEE IMAMUN, AND,
AFTER HER DEATH, BABOO GUNNA LALL (*Plaintiff*), *Respondent*.

[*Interest—Act XXXII of 1839—Amount to be in deposit without interest till a certain definite time—Liability for interest after expiry of period—No demand necessary.*]

An agreement not to demand interest for sums in deposit for a certain period to recover rupees 17,921-1½ principal, and rupees 13,456 4 Kuldar interest, does not bar the award of interest, should the money so deposited not be paid at the end of that period. No notification of demand of interest is necessary to entitle a person in such a case to receive it.

Vakeel of Appellant—Moonshee Ameer Alee.

Vakeel of Respondent—Baboo Ramapersaud Roy.

APPEAL laid at rupees 15,817—14-9-10, decreed against the appellant in part of rupees 33,468 8-1, or ginally sued for by the plaintiff.

The suit was instituted against appellant and Rasbeharee under the following circumstances, as set forth in the plaint. In the suit of Asudoollah *versus* the plaintiff in this case, Asudoollah got a decree for possession of certain mouzahs, and on the security of Jaffer Shah obtained possession pending the appeal of plaintiff to the Sudder Dewanny Adawlut. On the 26th September, 1817, the Sudder Dewanny Adawlut reversed the decision, and plaintiff obtained possession. When Asudoollah appealed to the Privy Council, plaintiff was required to give security, and the defendants in this case became sureties; in consideration of which plaintiff made over possession of the property to them, they binding themselves to keep the profits in deposit for plaintiff until the decision of the case.

Subsequently, one Musst. Mujjoo obtained a decree for 6 annas of the property, when defendants petitioned to be released from responsibility as securities. On the 5th November, 1823, the Sudder Dewanny Adawlut cancelled the security-bond, and ordered plaintiff to find fresh security for 10 annas, and Mujjoo for 6 annas' shares, and that the collections hitherto made should remain in deposit with the former securities till the decision of the suit in appeal. Subsequently, Amjud Hossein got a decree for 4 annas of the property, and he was ordered to give security for 4 annas, and plaintiff for 6 annas' share. Accordingly, Kishen Jeevan Dass and Brijall Sahoo became security for plaintiff, on 12th May, 1826, and these securities obtained possession. Subsequently, by [39] solanama, in the Sudder Dewanny Adawlut, plaintiff recovered 1½ anna share from Mujjoo, thus making his portion 7½ annas.

On 7th December, 1836, the appeal to the Privy Council was dismissed, and plaintiff claims the amount of the profits of his share in the property, which he asserts were collected by the defendants, but which he asserts were never refunded to him,—the few payments which were made, and which are given at the foot of the plaint, being on account of interest. Plaintiff admits that it was agreed that no interest should be charged on the deposits, but as the defendants neglected to fulfil their part of the condition, *viz.*, to refund on the dismissal of the appeal to the Privy Council, he considers that interest is fairly due to him, and sues for it accordingly.

The defendant Rasbeharee made an amicable arrangement, and filed a petition, stating that he would pay half the amount of principal and interest sued for.

Belasbeharee, the defendant, appellant, in his defence stated that the total amount of collections for which he was responsible was rupees 8,960-8, and Rasbeharee for a similar amount; that out of that due by him plaintiff had admitted the receipt of rupees 4,775, and that his receipts and those of his vakeel would prove a further payment of rupees 2,600, and that rupees 602-13 were paid under order of Court for fees to vakeels; that the original agreement barred a demand of interest, and payment of the principal having been made, no claim for interest ought to be admitted.

The first question which the principal sudder ameen disposed of was that of whether the suit was barred by the law of limitation, and he ruled that by clause 4, section 6, Regulation II of 1805, it was not, being for amount of deposit.

He rejected the receipts alluded to and tendered by the defendant Belasbeharee, and holding that the defendant had not fulfilled by prompt payment the conditions on which interest was waived, he held the defendant responsible for the principal sued for and interest from the date of the decision of the Privy Council being notified to him, amounting altogether to rupees 15,817-14-9, and passed a decree against him accordingly, with costs in proportion. He further recorded that the defendant Rasbeharee had paid the plaintiff his share by amicable settlement, and exempted him from all but his own costs.

From this the defendant Belasbeharee appeals, and his pleader has submitted the following issues:—

Issues on behalf of the appellant :

First,—Whether in the present case the proceeding under section 10, Regulation XXVI of 1814, has been held agreeable to the direction contained in the Circular Order of 8th May, 1850, and whether the lower court's decision is not defective and incomplete, in case the proceeding has not been held as directed by the Circular Order above cited?

Second,—Whether the statute of limitation is not applicable to the present case?

Third,—Whether the receipts repudiated by the plaintiff are proved and trustworthy?

Fourth,—Whether, with reference to law and equity, as well as the stipulation contained in the document, the plaintiff is entitled to receive interest on the sum deposited?—and, if so, then from what period is he to get interest, and to what amount?—and whether the principal sudder ameen's decision respecting the above point is sufficient?

Fifth,—Whether the plaintiff can be benefited and the appellant should suffer a loss by the compromise effected between the plaintiff and Baboo Rasbeharee, one of the defendants?

On opening the case, the pleader for appellant gives up the first and second issues: argument therefore is directed to the fourth issue.

Moonshee Ameer Alee, for appellant—The principal sudder ameen holds that the agreement only barred the charge of interest up to the date of decision of the Privy Council being made known. The agreement does not bear such a construction. The pleader reads it to the following effect, *viz.*, that "the profits should be held in deposit without interest till the adjudication (*ruffadad*) of the case, and that the plaintiff would never demand interest." The decision of the principal sudder ameen, he contends, is contrary to the last sentence.

The decision was made known 5th May, 1837; payments were made up to 1842, under several receipts which are admitted by plaintiff. These receipts acknowledge payment on account of deposit, not on account of interest. There are other persons besides plaintiff to receive the deposits, viz., Amjud Hossein and Bebee Mujjoo. When these persons demanded payment they received it and granted a release in 1840, and made no claim to interest, which is not probable they would have done if it were justly claimable. My client paid whenever payment was demanded, and is not liable to interest merely because the plaintiff neglected to demand payment in full.

In a case decided in 1836, on the 3rd April, interest was given on deposit money, in which it had been stipulated that interest should not be claimed, but in that case it was proved that payment had been demanded but refused on frivolous pretexts.

If the claimant neglect to demand payment, is the person by whom it is due to be punished by being charged with heavy interest?

In a case decided 6th May, 1836, the Court refused to decree interest on rent not claimed for a long period.

[41] According to Act XXXII of 1839, the plaintiff, if he had claim to interest, should have notified; not having done so, he cannot claim it.

Baboo Ramopersaud Roy in answer.—The agreement was for mutual benefit. The defendant was to have the use of money collected without interest for a certain period, provided my client was successful in the suit appealed; and if otherwise, the defendant was liable for the interest due to the opposite party; my client's benefit was freedom from risk.

The agreement was, that the collections should remain in deposit without interest till the decision of the case, and this Court passed an order to the same effect on the defendant praying to be absolved from being security after the decree in favor of Mujjoo. In 1846, on the Court ordering payment of costs due to Government, my client referred the Court to the defendant, and the defendant being called upon, stated that he had paid all due by him; seeing, therefore, that defendant was acting a dishonest part, my client was obliged to go into court. In my client's petition of 1836 his claim to interest is distinctly stated.

There was no necessity for my client to demand payment; it was for defendant to tender it.

The acts of my client's sharers cannot bind him in any respect.

As to the Act of 1839, this claim comes under the first category of the Law, viz., a debt payable *at a certain time*, which does not require a demand to be made in order to justify a claim to interest. Interest is therefore due to my client.

Moonshee Ameer Alee in reply.—The pleader for respondent has not attempted to explain the last sentence in the agreement relied on by me. My client was security for rupees 1,28,530; no benefit to him is apparent in the transaction.

On the third issue:

Moonshee Ameer Alee.—The two receipts repudiated are precisely the same as those admitted. They are, one dated Bhadoon, 1245 for ... Rs. 500
Ditto 7th Cheyt 1246, 2,100

Total ∴ Rs. 2,600

The reasons of the principal sudder ameen for rejecting these are, first, that plaintiff has denied them, which is a futile reason.

Second, that defendant has not stated the dates of them in his answer. This applies also to the receipts admitted by the principal sudder ameen.

Third, that Mukkoo, witness, states that Sheebchurn was an attesting witness, which the receipt does not bear out; this is a trifling mistake; there is one Shoomun Lall, an attesting witness.

[42] One of the receipts, dated 19th Bhadoon 1245, admitted by plaintiff, and that of 7th Cheyt 1246, repudiated, are witnessed by the same witness. They all bear plaintiff's seal.

Moonshee Ameer Alee here requests the Court to hear the evidence of Sheikh Mukkoo, Ramchurn and Brijmohun, the last, at the time of examination, a vakeel of Court.

Baboo Ramapersaud Roy, in answer.—The absence of date of the receipts in the answer shows that the receipts were not at that time in existence. The similarity of the receipts is no argument in favor of their genuineness. The defendant had the real ones before him as a guide to the forgery. The witnesses have deposed with suspicious accuracy to petty details after a long lapse of years; nevertheless, they cannot say who wrote them. The two last witnesses have given unsatisfactory reasons for being present at the time of payment.

Moonshee Ameer Alee in reply.—The receipts do not cover the whole amount due. If my client were disposed to forge, why should he not have forged a document which would cover all the demand?

JUDGMENT.

The Court are of opinion that the plain meaning of the agreement was, that the collections should remain in deposit with defendant, without interest, as long as the case was under litigation, but not after. It was a debt in the words of Act XXXII of 1839, *payable at a certain time*, and no demand on the part of plaintiff was necessary in order to render the defendant liable for interest after the final decision was known.

On the subject of the genuineness of the receipts, the Court, in addition to the reasons adduced by the principal sudder ameen for rejecting them as fabricated, find that they are both in the same handwriting, and different from those in which the admitted receipts are written. One of them (that for the largest sum) is on a stamp of rupees 2, while a stamp of 1 rupee value would have covered the amount, and the endorsement shows that it was bought at Arrah, while the residence of both the parties in this case and the transaction purports to have taken place at Patna. The Court attach much weight to the fact that the defendant gave no dates of the receipts in his answer, and the receipts neither bear the name of the writer, nor can the witnesses state who he was, although they go very minutely into other details. Under such suspicious circumstances, the Court do not feel that the judgment of the principal sudder ameen ought to be interfered with. The appeal is dismissed with costs.