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Haridas

With reference to the necessity of giving notice in a case like this, I entirely concur with the Chief Justice in what has fallen from him on that point.

Judgment was ordered to be entered for the plaintiffs, with costs of suit and the costs of reserving the case, and consequent thereon.

Attorneys for the plaintiffs: *Manisty and Hurrell.*

Attorneys for the defendant: *Limington, Hore, and Langley.*

Appeal Suit No. 162.

Jan. 14.

RUSTAMJI ARDESIR DÁVAR ..... *Appellant.*
RATANJI RUSTAMJI WÁDIÁ ..... *Respondent.*

Promissory Note payable on demand—Consideration—Interest.

A promissory note, payable on demand, given for interest due on a mortgage-deed, with interest on such interest, cannot be enforced by suit, there being no consideration for the making of such a note.

APPEAL from the decison of SARGENT, J.

The original suit (No. 414 of 1869) was brought to recover Rs. 2,055, with interest thereon at the rate of four per cent. per mensem, from the 22nd of April 1869 until payment, due on a promissory note in the usual form.

"Bombay, 22nd April 1869.

"On demand, I promise to pay to Rustamji Ardesir Dávar or order the sum of Rs. 2,055, say Rupees two thousand and fifty five, for value received, with interest at the rate of 4 per cent., say four per cent., per month.

"Rs. 2,055.

(Signed) "RATANJI RUSTAMJI WA'DIA'."

The case came on for hearing on the 10th of August 1869. The plaintiff was called and said "I know the defendant. The signature to the note shown me is his. No money was paid at the time, but there was interest due to me on a mortgage deed, the amount of which had been settled between us." No other evidence was given.

The defendant did not appear.

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On the 17th of August judgment was given for the defendant.

The appeal was argued before COUCH, C.J., and BAYLEY, J., on the 7th of January 1870.

Macpherson (with him *Badruddin Tyabji*) for the appellant:—The plaintiff is entitled to recover on this note. It must have been given either *in accord and satisfaction, or for and on account*, of the pre-existing cause of action.

If the note was given *in accord and satisfaction of* the interest due on the mortgage, then there was consideration: *Sibree* v. *Tripp* (*a*). If the note was given *for and on account of* the interest due on the mortgage, then (*a*) as to the principal sum of Rs. 2,055 the note only expresses what the law implies, viz., a promise to pay the sum admitted to be due on demand;— and (*b*) as to the promise to pay interest, that would be supported by the same consideration: *Earle* v. *Oliver* (*b*). Besides, for bearance in itself is consideration for a promise to pay interest, and here some forbearance must be presumed to have been intended: *Alliance Bank* v *Broom* (*c*).

Atkinson, Serjt., and *Farran*, for the respondent:—There was no consideration for the note. When the amount of interest due on the mortgage was calculated the law implied a promise to pay that amount on demand, and that consideration being executed will only support the promise that the law then implied: *Roscorla* v. *Thomas* (*b*), *Emmens* v. *Elderson* (*e*). The promissory note contains a promise to do something more, viz., to pay that amount on demand with interest. For this there is no consideration. From "Byles on Bills" it seems doubtful whether the promissory note would be good even for the principal; but it is not necessary to go to that extent. The *Alliance Bank* v. *Broom* is distinguishable from this case. There the Vice-Chancellor came to the conclusion that there must be presumed to have

(*a*) 15 M. & W. 23. (*b*) 2 Exch, 71. (*c*) 34 L. J. Ch. 256. (*d*) 5 Q. B. 234. (*e*) 4 Ho. Lo. Ca. 624; S. C. 13 C. B. 495; 6 C. B. 160.

been an intention to give time. That cannot be presumed here, for the note on its face is payable on demand, In *Earle* v. *Oliver* the agreement was undoubtedly good for the principal sum.

There is no evidence here to show that the note was given by way of accord and satisfaction; the contrary, therefore will be presumed.

Macpherson in reply.

Cur. adv, vult.

14 Jan. 1870. COUCH, C. J:—In this case, there being a sum of money due from the defendant to the plaintiff upon a mortgage-deed for interest, the defendant gave to the plaintiff a promissary note for the amount, payable on demand with interest at the rate of four per cent. per month; and the suit is brought upon the note for the principal sum and interest from the date of it. Now if the note had been payable at a future day, there would be evidence of an agreement to suspend the remedy for the existing debt until the note was due, which would be a sufficient consideration for it: *Baker* v. *Walker* (*f*). Here, the note being payable on demand, there is not merely no evidence of such an agreement, but the note itself imports the contrary. Before he made the note the defendant was liable to pay the money on demand, and so he continued to be. Nothing was done, or promised to be done, by the plaintiff; and, in the language of the Civil Law, the obligation is null, being without any cause.

It was argued by Mr. Macpherson, for the plaintiff, that the promise to pay the interest was a distinct contract, and that the forbearance which followed the giving of the note was a sufficient consideration for that, and he relied upon the case of *The Alliance Bank* v. *Broom* (*g*). But I think this cannot be treated as a separate contract. The promise in the note is to pay Rs. 2,055 with interest. The interest is to

(*f*) 14 M. & W. 465. (*g*) 34 Law J. Ch. 256

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be paid as an accessary to the principle, and if the note is void as to the principal sum it must, I think, be so as to the interest also. On this ground the present case is, in my opinion, distinguishable from *The Alliance Bank* v. *Broom*. The claim in the plaint being founded on the note only, the plaintiff is not entitled to recover the interest on the mortgage in this suit, and the judgment of the Division Court for the defendant must be confirmed with costs.

BAYLEY, J., concurred.

Decree confirmed with costs.

Attorney for the plaintiff: *Shamrav Pandurang.*
Attorney for the defendant: *Pestanji Dinsha.*

Referred Case.

Jan. 14.

YESOBA DÁMODHAR.....*Plaintiff.*
SECRETARY OF STATE FOR INDIA IN COUNCIL.....*Defendant.*

Land required for public purposes—Compensation to person deemed to be in possession—Real Owner, Suit by—Act VI. of 1857, *Secs.* 5, 7, 27, *and* 29.

A Collector who, after making proper inquires, pays compensation-money for land taken under Act VI. of 1857 to the person "deemed by him to be in possession as owner" (the amount of such compensation having been settled under Sec. 5) is not liable to be sued by the real owner of such land for the amount of such compensation-money

It is in the direction of the Collector whether he will take advantage of the provisons of Sec 29 or not

CASE stated for the opinion of the High Court by N Spencer, third Judge of the Bombay Court of Small Causes, under Sec. 55 of Act IX. of 1850 :—

"This action is brought by the plaintiff to recover compensation for 313 square yards of land, of which he alleges he is the rightful owner, and which have been taken possession of by Government, under the powers given to them by the "Act for the Acquisition of Land for Public Purposes" (No. VI. of 1857).