

APPELLATE JURISDICTION (a)

*Regular Appeal No. 63 of 1861.*GARUDA REDDI.....*Appellant.*GUDI JANAKAYYA GÁRU.....*Respondent.**Regular Appeal No. 66 of 1861.*GUDI JANAKAYYA GÁRU.....*Appellant.*GARUDA REDDI.....*Respondent.*

The defendant gave a bond on unstamped paper to the plaintiff's eldest brother. On the obligee's death the succession was disputed, and the obligor refused to pay the subsequent interest to the plaintiff:—*Held* that as the plaintiff had failed to take out a certificate of succession to the obligee, the obligor was justified in such refusal.

Held also that the plaintiff could not recover the stamp-penalty from the obligor.

The obligor having offered to pay the principal and interest into Court :—*Held* that he should be relieved from interest from the date of such offer.

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THESE were regular appeals from the decree of T. J. Knox, the Civil Judge of Chikkákol, in Original Suit No. 74 of 1861.

Branson for the appellant, the plaintiff, in No. 63.

Sloan for Gudi Janakayya Gáru in both appeals.

Garuda Reddi did not appear in No. 66.

The facts appear from the following

JUDGMENT :—This was a suit on a bond for rupees 21,000, with interest at $7\frac{1}{2}$ per cent., executed by the defendant on the 18th June 1852 in favour of the plaintiff's elder brother, Appalu Narasimulu Gáru, since deceased. It was admitted that interest had been paid on the bond up to 14th September 1854 ; and the plaintiff Garuda Reddi accordingly claimed interest from the latter date at $7\frac{1}{2}$ per cent., together with the amount of stamp-penalty, rupees 500, the bond having been executed on unstamped paper.

(a) Present Phillips and Frere, J J.

The defendant admitted the execution of the bond, but pleaded that after the death of the plaintiff's brother, the original obligee, the succession was in dispute between the plaintiff himself, and his nephew, the son of Appalu Narasumulu Garu, and that he, the defendant, had been at all times ready to pay the sum of due, if the plaintiff had produced a legal certificate of succession; as also that he had, on the 17th January 1856, further offered to pay the amount into Court.

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The Civil Judge pronounced the defendant to be liable for the principal rupees 21, 000, with interest at $7\frac{1}{2}$ per cent. from the 14th September 1854 to the 17th January 1856, the date on which the defendant offered to pay the money into Court; and again at the same rate from the 23rd December 1860, at which time it was shown that the defendant had notice of the plaintiff's right, under a decree of the late Sadr Court, to receive the money as the heir and representative of his deceased brother the obligee. For the interval between the 17th January 1856 and the 23rd December 1860, the Civil Judge declared the plaintiff to be entitled to interest on his bond at a reduced rate of $4\frac{1}{2}$ per cent, together with the amount of the penalty claimed rupees 500.

Both parties have appealed from this decree—the plaintiff in appeal No. 63 of 1861, in which he urges his title to recover interest at the full rate of $7\frac{1}{2}$ per cent. stipulated in the bond for the time between 17th January 1856 and 23rd December 1860; and the defendant in appeal No. 66 of the same year, in which he requests that he may be relieved from payment of the penalty, as well as of interest of the same period.

We are of opinion that from the time when the succession was disputed, and the defendant consequently declined the payment to the plaintiff as the alleged heir of his deceased brother, it became the duty of the plaintiff to take out a certificate of succession, and that in the absence of any such authority, the defendant cannot justly be charged with interest which has accrued owing to the dilatory conduct of the plaintiff himself. Nor can the penalty be recovered in equity. Both parties have united

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in endeavouring to evade the law, which prescribes the use of a stamp on such occasions, and to decree the reimbursement of the amount to the plaintiff would be contrary to the policy of law which governs such questions.

The defendant has evinced throughout a perfect willingness to pay the sum due, on production of the proper authority for its receipt, and we consider therefore that he is entitled to the costs.

We therefore dismiss the plaintiff's appeal No. 63 with costs, and in accordance with the request of the defendant in the appeal No. 66, relieve him altogether from payment of interest on the bond from the 17th January 1856 to the 23rd December 1860, as well as of the penalty. The substantial provisions of the original decree will in other respects remain undisturbed; but the plaintiff must pay the costs in both suits original and appeal.

Regular Appeal No. 63 of 1861 dismissed.

Regular Appeal No. 66 of 1861 allowed.
