

Referred Case.

1869
Jan. 29.RASAJI bin DAVLAJI.....*Plaintiff*.SAYANA bin SAGDU *et al.*.....*Defendants*.*Penalty—Promissory note payable by instalments—Increased rate of interest.*

Where a promissory note payable by instalments stipulated for interest at two per cent. Per mensem, and, in default of punctual payment, that interest should be charged at one anna per rupee per mensem from the date of the note, it was held that this increased rate of interest was a penalty which might be relieved from on payment of the lower rate.

Case referred for the decision of the High Court by Janardan Vasudevjee, Judge of the Court of Small Causes at Puna

“ In this suit the plaintiff sues the defendant for the payment of Rs. 125-12-0 on a promissory note for Rs. 199, which, after stipulating for repayment by monthly instalments, of ten rupees with interest at two per cent. per mensem, provides that, in default of punctual payment, interest shall be charged at one anna per rupee per mensem from the date of the note.

“ The defendants plead (1) that the plaintiff waived the agreement for payment by monthly instalments, and that, therefore, he is not entitled to demand the increased rate of interest; (2) that the agreement to pay the increased rate of interest is a penalty and ought not to be enforced.

“ The first plea is not proved. As to the second, it raises an important question of law. Act XXVIII. of 1855 abolishes all usury laws, and any rate of interest for which parties may stipulate is now legal. The agreement to pay an increased rate of interest on default in payment may, therefore, be enforced at law; but Equity will not recognize it. The object of the agreement is to secure payment at the stipulated time, but the Court of Chancery does not regard time as of the essence of the contract. There an agreement designed merely to secure the performance of the principal obligation is looked upon as a penalty, which Equity will

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intefere to relieve against (Story on Equity Jurisprudence Vol. II. secs. 1314 and 1316) ; and in *Seton v. Slade* (a) the Court of Chancery has held that a stipulation to pay interest at five per cent. on a mortgage with interest at four per cent., if the four per cent. be not regularly paid, is a penalty, and that the party may be relieved from it, on the terms of paying the four per cent, with interest thereon from the time when the same ought to have been paid, as if it had been received. (White and Tudor's Leading Cases in Equity, Vol. II., pp. 475 and 476, 3rd ed.) It is on this doctrine that that Court decrees the redemption of a mortgage, which, in default of payment at the stipulated time, would be foreclosed at law, and our Courts, which are Courts of Equity as well as of law, have in later years adopted that doctrine, and have awarded the re- conveyance of mortgaged property on payment of the mortgage debt with interest. I am, therefore, of opinion that the same doctrine should be made applicable to cases of the class now submitted, and that the defendants may be relieved from paying the increased rate of interest. ”

PER CURIAM (COUCH, C. J., and NEWTON, J.) The Court is of opinion that the increased rate of interest is a penalty, and may be relieved from on payment by the defendant of the lower rate.

Referred Case.

MOTJI bin RATNAJI.....*Plaintiff.*
 SHEKH HUSEN*Defendant.*
Interest—Promissory Note—Penalty.

Jan. 19.

Where promissory note payable by instalments stipulated that, in default of payment of any one instalment, interest should run at one anna per rupee per mensem, this rate of interest was relieved from on payment of interest being made at 9 per cent. per annum from the time when each instalment became payable until the time of payment.

CASE referred for the decision of the High Court by Janardhan Vasudevji, Judge of the Court of Small Causes at Puna.

“The only difference between the two cases, (this and the one immediately preceding) is, that in the case already re-

(a) 7 Ves. 265.