

*Referred Case.*1870.
Jan. 15.HA'KMA' MA'NJI *et al.* *Plaintiffs.*MEMAN AYAB HA'JI *et al.* *Defendants.**Hindú Law—Interest—Act XXVIII. of 1855.*

Act XXVIII. of 1855 does not affect, or supersede the rules of, the Hindú law as to interest.

A promissory note, payable two months after date, given for money lent and interest in advance at the rate of $12\frac{1}{2}$ per cent. per mensem, contained an agreement to continue to pay that rate of interest after the due date if the money was not then repaid.

Held that the high rate of interest so agreed to be paid did not constitute a penalty, against which the courts could relieve.

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

“This action is brought to recover Rs. 258-2-0, being interest for seven months, at the rate of $12\frac{1}{4}$ per cent. per month, on a promissory note for Rs. 295 made by the defendants on the 30th of November 1868.

“On behalf of the defendants, it was contended, before the Third Judge of the court, that the object of the agreement to pay so high a rate of interest as $12\frac{1}{2}$ per cent. per month was to secure the repayment of the principal sum at the stipulated time; that the agreement was, therefore, in the nature of a penalty, from which the defendants ought to be relieved on payment of interest at the rate of 9 per cent. per annum.

“The amount for which the note has been taken includes interest charged in advance at the agreed rate of $12\frac{1}{2}$ per cent. for the two months that the note has to run.

“The Third Judge was of opinion that the high rate of interest stipulated for was not a penalty, and that the court could not relieve the defendants from paying it, and gave a verdict for the plaintiffs for the full amount claimed.

“The Full Court, however, to which an application was made on behalf of the defendants, considered that this case

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fell within the principle laid down by the High Court in the cases of *Rásáji Davláji v. Syáná Sagdá (a)* and *Motoji Rátánáji v. Shekh Húsen (b)*, and, subject to the opinion of that court on the following question, reduced the verdict to Rs. 15-5-2, equivalent to interest at the rate of 9 per cent. per annum.

“The opinion of the Judges of the High Court is now solicited on the following question:—

“Is the agreement, in the promissory note, to pay interest at the rate of $12\frac{1}{2}$ per cent. per month after the expiration of the two months allowed for the repayment of the principal, a penalty from which the defendants can be relieved?”

The promissory note was in the following form:—

“To Márvádi Hakmá Mánji (and) Devchand Girdhári, written by Meman Hájí Ayab Hajayáni and Shá Ghellá Khemji, to wit: We two individuals together have received from you on loan, to wit, Rupees two hundred and ninety-five in full, in cash; (we have) received (the same) on personal security; the same are to be duly paid; to be duly paid at home or abroad; to be duly paid whenever the owners (or creditors) may demand; the time (for repayment) of these rupees is (fixed at) two months. If we retain (the money) beyond that (time), interest is to accrue at the rate of $12\frac{1}{2}$ per one hundred per month, (in figures) twelve and a half per cent. per month; the same is to be paid; the interest is to be paid month by month. The Rs. 295 of this note are to be duly paid in cash on personal security. If we shall raise any objection to this note, we shall truly lose our own true religious faith. This writing is agreed to by, and binding on, us and our heirs and executors. The 1st of Magshar Vadya of Samvat 1925, the day of the week Monday, the 30th day of November 1868.

(Here the signature.)

Mírzá Ayab Hájí, his signature is in his own handwriting; Rs. 295 have been received in cash on fixing the time of two months. Interest has been paid up to the fixed time, after that (time) interest is to accrue. It is duly to accrue agreeably to what is written above. In the event of my keeping (the money) unpaid beyond the fixed time, interest is to be duly paid at $12\frac{1}{2}$ per cent. per month. The same is to be duly paid per 1 cent., agreeably to what is written above. His own handwriting.

(Here the attestation.)

Márvádi Powa Javráji, his attestation to Rs. 295 in the presence of the parties.

14. Shá Ghella Khemji, his signature to Rs. 295, namely, two hundred and ninety-five, agreeably to what is written above. The time of two months has been fixed. In the event of my keeping the money beyond the two months, interest is to be duly paid at 12½ per cent. per month. His own hand writing."

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There was no appearance for either party.

The case was considered by Couch, C.J., and Westropp, J., and on the 15th of January the following judgment was given by

Couch, C.J.:—In this case the agreement is only that if the money is not paid at the end of the two months, interest at the same rate as was paid for the two months shall continue to be paid. It is not an agreement for increased interest on default in payment, as it was in the cases referred to. The doctrine does not apply to such a case as the present, and the interest cannot be treated as a penalty from which the defendant can be relieved.

But Act XXVIII. of 1855 does not affect the Hindú law as to interest: *Khushálchand Lálchand v. Ibráhim Fakír (c)*, *Ram Lall Mookerjee v. Haran Chunder (d)*. This court must, therefore, remit the case to the Small Cause Court for a new trial, in order to determine whether the rate of interest claimed does not exceed what the plaintiff is allowed to take by Hindú law, which is very fully stated in the judgment of Sir Barnes Peacock in the case above quoted, and to decide the case accordingly.

The costs of reserving the question now decided are to be paid by the defendants.

(c) 3 Bom. H. C. Rep., A. C. J. 23.

(d) 12 Calc. W. Rep., App. from Or. Jur. 9.