APPELLATE CIVIL.

(26)

Before Mr. Justice Melvill and Mr. Justice Kemball.

1878.
December 19.

NANCHAND HANSRAJ AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* BAPUSAHEB RUSTAMBHAI (ORIGINAL DEFENDANT), RESPONDENT.*

Hindu law—Interest—Damdupat.

The Hindu law rule of *damdupat* does not operate when the defendant is other than a Hindu.

Upon a contract for the payment on a day certain of money borrowed with interest at a certain rate down to that day, a father contract for the continuance of a same rate of interest after that day, until actual payment is not to be implied. When, therefore, the agreed rate of interest is excessive and extraordinary the Court will reduce the rate to a reasonable amount.

THIS was a second appeal from the decision of Satyendranath Tagore, Judge of the district of Ahmedabad, confirming the decree of the Subordintae Judge of Dhandhuka and Gogo.

The plaintiffs, who were Hindus, sued the defendant, a Mahomedan, to recover from him Rs. 665, alleging that a bond for Rs. 1,901 was executed to their father by the said defendant, that Rs. 1,610 had been received as part payments, leaving a balance still due of Rs. 291, which with Rs. 374 interest made up the amount claimed.

The defendant, *inter alia*, contended that the Hindu law of *damdupat* applied, and that the plaintiff could not recover as interest more than Rs. 291.

The lower Courts gave a decree for Rs. 291 principal and 291 interest. The District Judge said: "The lower Court was right in applying the rule of *damdupat* in this case. The Hindu law forbids a creditor to receive as interest more than the amount of the principal paid up at the time, and the plaintiff, being a Hindu, was not at liberty to abrogate the express provisions of that law, even when dealing with a Mahomedan. Considering, also, the high rate of interest [24 per cent.] charged, I think the amount awarded was fair and reasonable."

Gokaldas Kahandas Parekh for the plaintiffs:—The rule of *damdupat* does not apply to this case in which the defendant

*Second Appeal, No. 310 of 1878.

1878

NANCHAND HANSRAJ v. BAPUSAHEB RUSTAMBHAI

is a Mahomedan. The lower Courts were wrong in applying it, and in considering that 24 per cent. was an excessive rate of, interest, and between the date fixed for repayment and that of actual repayment: *Gossain Luchmee* v. *Tekait Het*, (1) and *Cook* v. *Fowler*.(2)

Nanabhai Haridas, Government Pleader, for the defendant.—The Hindu law puts an obligation on the Hindu creditor not to receive more interest than the amount of the principal. The *damdupat* rule was, therefere, property applied. When a sum borrowed is not repaid punctually, the amonnt of interest agreed upon in the bond should be taken to be the proper amount to be charged between the date fixed for repayment and that of actual repayment.

MELVILL, J.—In this case the defendant is a Mohomedan, and the Courts below were wrong in applying the Hindu rule of *damdupat*, which can only operate when the defendant is a Hindu. But we see no reason for increasing the amount of interest awarded by the District Court. In *Gossian Luchmi* v. *Tekait Het*,(3) in which a debtor had by his bond stipulated to pay interest at 12 per cent. per annum up to the time fixed for payment, but the money had remained unpaid for a long time, the Court refused to award the stipulated rate of interest beyond the period fixed for payment, on the ground that the agreement for high interest only operated for that period, and that any interest which might be awarded for the subsequent period was in the nature of damages, and, therefore, within the discretion of the Court. This is quite in accordance with the decision of the House of Lord in the latter case of *Cook* v. *Fowler*.(4) In that case Lord Selborne said: "My Lords, unless it can be laid down as a general rule of law, that upon a contract for the payment of money borrowed for a fixed period, on a day certain, with interest at a certain rate down to that day, a farther contract for the continuance of the same rate of interest after that day until actual payment is to be implied, the decision of the Vice-Chancellor in this case is not erroneous." "I entirely agree with those of your Lordships

(1) 18 Calc. W. R. 322 Civ. Rul.
(2) L. R 7, H. of L. 27.
(3) 18 Calc. W. R. 322 Civ. Rul.
(4) L. R. 7 H. of L. 27.

who have preceded me that no such contract is to be implied, unless there is something to justify it upon the construction of the words of the particular instrument; and that, although in cases of this class interest for the delay of payment *post diem* ought to be given, it is on the principle, not of implied contract, but of damages for a breach of contract. The rate of interest to which the parties have agreed during the terms of their contract, may well be adopted in an ordinary case of this kind, by a Court or jury as a proper measure of damages for the subsequent delay; but that is because, ordinarily, a reasonable and usual rate of interest which it may be presumed would have been the same whatevers might be the duration of the loan, has been agreed to. But in the case before your Lordships the agreed rate of interest is excessive and extraordinary; and, although no question is raised between the parties as to its fairness or reasonableness, so far as it was matter of express contract, it by no means follows that it would have been fair and reasonable, or would have been so regarded by the borrower, if it had been indefinitely extended to every possible delay of payment after the stipulated time. In my opinion, no Court or Judge could, under the particular circumstances of this case, have adopted that rate of interest, as a proper measure of damages, without a very great miscarriage of justice."

In the present case the bond was passed on the 4th November, 1871, and the rate of interest agreed upon was 24 per cent. *per annum*. The bond contains the following clause:—"The settlement in respect of this bond is to be made in twelve months. I am to pay the amount of this bond together with interest whenever the obliged may demand payment of the same." It was not clear whether the word "settlement" means that the money was to be paid in twelve months, or that the accounts were to be made up in twelve months, and the bond renewed. But in either case we think that the agreement for the payment of interest at the extremely high rate of 24 per cent. was, in the intention of the defendant, to operate for twelve months only, and that at the end of twelve months he had a right to have his account made up, and the rate of interest reconsidered and adjusted

1878
NANCHAND HANSRAJ
v.
BA'PUS'AHEB RUSTAMRHAI

For the period, therefore, subsequently to the 4th November, 1872, the Courts below were only bound to award damages for non-payment, and in so doing they would not have been called upon to award more than six per cent. on the amount of principal due. The sum awarded by the Courts below is in excess of that which the plaintiff would have been entitled to recover under this view; and on this ground we confirm the decrees of the Courts below, with costs of this appeal on the appellant.

Decrees affirmed.

APPELLATE CIVIL.

(27)

1878
November 26.

Before Mr. Justice West and Mr. Justice Pinhey.

D. R. BAM (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE SURVEY COMMISSIONER AND THE COLLECTOR OF RATNAGIRI (ORIGINAL DEFENDANTS), RESPONDENTS.*

Khots—Landlord and tenant—Mistaken entry in Register—Survey Act.

The mere entry of the names of the tenants of a *khot* in the Government resgisters as occupants under the Revenue Survey Act No. 1 (Bombay) of 1865, does not constitute an injury to the landlord of a tangible kind, of which the Civil Courts can take cognizance. The *khot's* rights as landlord, if they can be established, cannot be prejudiced by any proceeding under the Survey Act, there being nothing in that Act, or the rules framed under it, which affect the rights of subjects of the Government *inter se.*

The utmost benefit which the tenants can derive, as against their landlord from being entered as occupants under the Act, is a right to claim a deduction of the amount of assessment paid by them by direct to the Government. If they deny his title, he can sue them either to establish his title and recover the full rent due to him under his contract with them, or to object them as holding possession of his lands by a title which they themselves repudiate.

This was an appeal from the decision of C. B. Izon, Acting Judge of Ratnagiri, rejecting the plaintiff's claim.

In his plaint the plaintiff set forth that Kolthas, in the Ratnagiri Collectorate, was a *dhara* village,—that is, one in which there were originally no *khoti* lands; that it was surveyed by the defendant No. 1, the Survey Commissioner that certain lands belonging to the plaintiff should have been included in his *dhara* holding, and should not have been entered, as was done, in the

*Appeal No. 4 of 1878.