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- (c) On Rs. 500 from the 20th of January 1905 to the 2nd of August 1905.
- (d) On Rs. 420 from the 3rd of August 1905 to the 1st of November 1905; and
- (e) On Rs. 300 from the 2nd of November 1905 up to date of judgment.

There will be no order as to costs as the plaintiffs before filing this suit have abandoned their prayer for costs. Interest on judgment at 6 per cent. per annum till payment.

B. N. I.

[A similar view of the power of the Court was taken by a Bench of the Allahabad High Court (Richards and Knox, JJ.) in their judgment in *Balkishan Das v. Madan Lal*, delivered on January 23rd 1907, and reported in Allahabad Weekly Notes, 1907, p. 55.—Ed.]

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Pratt.

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March 4.

SAUNADANAPPA BIN ANDANAPPA CHINWAR (ORIGINAL DEFENDANT),
APPELLANT, v. SHIVBASAWA KOM AMINGOWDA DESAI (ORIGINAL
PLAINTIFF), RESPONDENT.*

Hindu Law—Interest—Debtor wrongfully withholding payment—Demand by creditor—Interest Act (XXXII of 1839)—Indian Contract Act (IX of 1872).

The plaintiff sued to recover a sum of money with interest from the date of demand from the defendant, who held the money in deposit for her. There was no agreement between the parties to pay interest. The first Court dismissed the claim as to interest; but the lower appellate Court allowed interest on the amount of the deposit from the date of the demand by plaintiff to the date of payment.

The parties to the suit were Hindus governed by the law of the Mitakshara.

Held, under special circumstances, interest may be awarded by Courts in India, by way of damages.

Held, further, that under Hindu Law as it is to be found in the Mitakshara there is annexed to each contract of debt, in which there is no agreement to pay interest, the term or incident that such loss shall be made up by the debtor, if he

* Second appeal No. 698 of 1905.

wrongfully withholds payment after demand : and that this incident was annexed to every such contract at the date when the Interest Act (No. XXXII of 1839) came into force.

Held, further, that the parties being Hindus governed by the Mitakshara that constituted a special circumstance justifying the award of interest.

Harroppersaud Roy Chowdhry v. Shamapersaud Roy Chowdhry⁽¹⁾ applied.

SECOND appeal from the decision of M. B. Tyabji, District Judge of Bijapur, varying the decree passed by D. A. Idgunji, Subordinate Judge at Bagalkot.

Suit to recover a sum of money.

The plaintiff deposited in 1894 a sum of money with the defendant. She withdrew from that amount from time to time. There was no agreement to pay interest. On the 23rd November 1900, the balance in her favour was Rs. 2,046-13-9, which she demanded from the defendant. The defendant did not pay. The plaintiff, therefore, filed this suit on the 22nd December 1902, to recover the sum with interest from the defendant.

The defendant denied the transactions alleged by the plaintiff and submitted that the sum due by him to the plaintiff was only Rs. 327-12-0.

The Subordinate Judge allowed the plaintiff's claim, but rejected her claim as to interest "as there was no agreement to pay interest."

The defendant appealed against the decree : and the plaintiff filed cross-objection as to the claim for interest. The District Judge dismissed the appeal, but allowed interest to plaintiff from the date of demand to date of payment.

The defendant appealed to the High Court.

G. K. Dandekar, for the appellant:—There admittedly was no agreement to pay interest. The only provisions under which the Court can therefore award interest are those of Act XXXII of 1839. The Act mentions only two instances where the Court may grant interest in the absence of any agreement providing for interest. First, when the debts or sums certain are payable at a certain time by virtue of some written instrument. Secondly

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when a notice is given in writing that interest will be charged if payment is not made. Neither of these conditions is found to exist in the present case. The party therefore is not entitled to interest, at least, to interest before suit. See *Surja Narain v. Pratap Narain*⁽¹⁾; *Kamalammal v. Peeru Meera Leevai Rowthen*⁽²⁾; *Surendra Kumar v. Kunja Behary*⁽³⁾; *Juggomohun Ghose v. Manickchund*⁽⁴⁾; and *Turner v. Burkinshaw*⁽⁵⁾.

M. B. Ohanbul, for the respondent :—In the present case there was no written instrument as to the money transaction; and there was no notice in writing to the effect that interest would be charged. But as there was wrongful withholding of money after the 23rd November 1900, the lower Court was justified in awarding interest. Besides the Act itself makes a provision for allowing interest in all cases in which it was payable by law before the Act was passed.

Again, under section 26 of the Bombay Regulation IV of 1827 in the absence of any provisions contained in Acts and Regulations, the usage of the country in which the suit arose or in the absence of any usage or law of the defendant, justice, equity and good conscience are the guides by which a case is to be decided. There was and is the usage of awarding interest where money is wrongfully withheld. It is just and equitable to allow interest to a man "who is wrongfully deprived of the use of his money."

CHANDAVARKAR, J. :—The appellant, Saunadanappa bin Andanappa Chinwar, was sued by the respondent, Shivbasawa, for the recovery of Rs. 2,415-1-11 in the Court of the Subordinate Judge, Second Class, at Bágalkot. The respondent alleged in her plaint that she had deposited Rs. 10,843 in May 1894 with the appellant under an agreement that he should repay the amount in such sums as she might direct; that he had repaid part of the amount; that the balance, Rs. 2,046-13-9,

(1) (1899) 26 Cal. 955.

(3) (1900) 27 Cal. 814.

(2) (1897) 20 Mad. 481.

(4) (1859) 7 Moo. I. A. 263.

(5) (1867) L. R. 2 Ch. App. 488.

having been due from him on the 23rd of November 1900, she had demanded that sum but that the respondent had refused to pay. The appellant claimed in her plaint interest on the balance from the date of demand to the date of payment.

The Subordinate Judge found her claim proved except as to interest, as to which he held that since "there was no agreement to pay interest," she was not entitled to it.

The appellant appealed to the District Court and the respondent filed cross-objections to the decree of the Subordinate Judge, whereby the interest claimed had been refused.

The District Judge dismissed the appellant's appeal with costs and allowed the cross-objections of the respondent by awarding interest to her at the rate of 9 per cent. per annum, on the principal sum found due by the Subordinate Judge, from the 23rd of November 1900, the date of the appellant's demand, to the date of suit, and further interest at 6 per cent. per annum from the date of suit to the date of recovery.

On this second appeal, the only objection taken to the decree of the District Court is that that Court has erred in law in awarding interest to the respondent from the date of her demand to the date of suit. The ground upon which the District Court awarded that interest is that the respondent was entitled to charge it "on the sum wrongly withheld from her" by the appellant, "after her demand of 23rd November 1900." It is contended that, no demand of payment having been made in writing by the respondent so as to give, as required by the Interest Act (No. XXXII of 1839), notice to the appellant that interest would be claimed from the date of such demand until the term of payment, mere wrongful withholding of the principal sum by the appellant from the date of the demand does not give to the respondent any right to the interest claimed.

It is admitted before us and the findings of both the Courts below amount to this, that the demand of payment was oral and that there was no notice, coupled with the demand, that interest would be charged. The appellant is entitled, therefore, to succeed unless the respondent is able to bring her claim within the proviso to the first section of the Interest Act, according to

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which "interest shall be payable in all cases in which it is now payable by law."

As observed by the Judicial Committee of the Privy Council in *Thakur Ganesh Bakhsh v. Thakur Harihar Bakhsh*⁽¹⁾, "the Interest Act was passed for the purpose of extending to India the provisions of the English Act (3 & 4 Will. 4, c. 42), and the words above quoted are the same as those in the English Act. The English decisions on that Act may, therefore, be referred to as a guide in construing the Indian Act." The question whether in case of a wrongful withholding of a debt by a debtor after demand made, orally or otherwise, by his creditor, without any notice in writing that interest would be charged from the date of demand in the event of non-payment, interest can be awarded from that date by way of damages, came up for decision before the House of Lords in *The London, Chatham and Dover Railway Co. v. The South Eastern Railway Co.*⁽²⁾. Lord Herschell there said:—"I confess that I have considered this part of the case with every inclination to come to a conclusion in favour of the appellants, to the extent at all events, if it were possible, of giving them interest from the date of the action; and for this reason, that I think that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to its use." But, after examining the course of decisions, the last of which was one by Lord Tenterden in *Page v. Newman*⁽³⁾, Lord Herschell came to the conclusion that it was not possible to re-open the question settled in this last case, though he felt that the decision in that case had kept claims to interest within limits "too narrow for the purposes of justice." The other Law Lords agreed, sharing at the same time the regret expressed by Lord Herschell that their decision was unjust and unsatisfactory. This decision of

(1) (1904) L. R. 31 I. A. 116 at p. 120. (2) [1893] A. C. 429 at p. 437.

(3) (1829) 9 B. & C. 378.

the House of Lords has been followed by the Madras High Court in *Kamalammal v. Peeru Meera Levvai Rowthen*⁽¹⁾, where the learned Judges (Subramania Ayyar and Benson, JJ.) have held that interest cannot be awarded by way of damages for wrongful detention of a debt. Besides relying on the authority of the decision of the House of Lords, they cite the decision of the Privy Council in *Juggomohun Ghose v. Kaisreechund*⁽²⁾ and of the Madras High Court in *Kisara Rukkumma Rau v. Cripati Viyanna Dikshatulu*⁽³⁾. But judging from the report of *Kamalammal v. Peeru Meera Levvai Rowthen*⁽⁴⁾, it appears that the attention of the learned Judges, who decided that case, was not drawn to the decision of the Privy Council in *Harropersaud Roy Chowdhry v. Shamapersaud Roy Chowdhry*⁽⁵⁾, where, after quoting the proviso to the first section of the Interest Act, the Privy Council say with reference to the proviso :—

“And that refers their Lordships to the state of the law and the practice in India independently of the statute. They have taken some pains to ascertain what that law and practice has been, and have been referred to a number of cases upon the subject. It may be enough now to quote a case, which is to be found reported in *Carran's* cases in the Presidency Sudder Court of the date of 1850, where certain resolutions were come to at a sitting of all the Judges of the Court, and among those resolutions was this :—‘Interest on mesne profits may be awarded as of course from date of suit in a decree ; when, however, interest is awarded from an earlier or from a later date than of suit, special reasons should be assigned in the decree.’ Their Lordships find that this resolution has been, to a great degree, acted upon in subsequent cases, indeed there have been subsequent cases in which interest has been given at a date prior to the institution of a suit, and their Lordships are far from saying that such cases have been wrongly decided.”

In the particular case before their Lordships, interest was awarded from the date of suit, having regard to its circum-

(1) (1897) 20 Mad. 481.

(3) (1863) 1 Mad. H. C. R. 369.

(2) (1862) 9 Moo. I. A. 260.

(4) (1897) 20 Mad. 481.

(5) (1878) L. R. 5 I. A. 31 at p. 38.

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stances, among them the great delay in suing. But all the same it is a decision of the highest tribunal, recognizing as law the long practice of the Courts in India existing when the Interest Act came into force, according to which interest was awardable as damages prior to suit under special circumstances.

Apart from that practice, the rule of the Hindu Law on the question now under consideration and its applicability in suits where both the debtor and the creditor are Hindus must be considered, because if that law applies, that would be a special circumstance justifying the award of interest within the principle of the decision of the Privy Council. Under section 26 of Bombay Regulation IV of 1827, "the law to be observed in the trial of suits shall be Acts of Parliament, and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and, in the absence of specific law and usage, justice, equity and good conscience alone". When the Interest Act of 1839 came into force, there was no Act of Parliament or Regulation, which declared that interest on a debt wrongfully withheld after demand of payment shall not carry interest from the date of such withholding. It is not pleaded before us that there was any usage at that time to that effect in the country in which this suit arose. In the absence of these, the law of the defendant applies. The defendant here is a Hindu and the question is—what is the Hindu Law on the point now under decision?

The parties before us come from a part of the Presidency, which is governed by the law of the *Mitakshara*. In his chapter on "Loans," *Vijnaneshwara* distinctly lays down the Hindu Law to be that if a debtor does not repay the debt after demand of payment has been made by his creditor, such debt shall carry interest from the date of demand. The passage in the *Mitakshara*, where this is stated, has not been, so far as we are aware, translated into English. We give below its translation.

Vijnaneshwara first quotes the following, which is the second half of *Yajnyavalkya's* text:—

"In all cases all shall pay interest as stipulated."

On this Vijnaneshwara's gloss is :—

“All debtors whether Brahmins or others, [including] all castes, shall pay interest as stipulated, whether the debt is secured or not. Interest accrues sometimes even though there be no agreement. As Narada [says] :—“There shall be no interest (payable) in any case on gifts made through affection, if there is no agreement. But [in the case of such debt], even if there be no agreement [to pay interest], interest shall run after 6 months.”

“But with reference to him [debtor] who, having contracted a debt, goes to a foreign country, Katyayana [says] :—“He who, having contracted a debt goes to a foreign country, without re-paying it; interest shall run on his debt after a year.”

“And with reference to him who, having contracted a debt, does not re-pay it, though a demand [of payment] has been made, but goes to a foreign country, it is said by the same” [i. e. Katyayana] :—

“He who, having contracted a debt without any agreement to pay interest, goes to a foreign country without paying after a demand [of payment] has been made, shall have interest accruing on that debt after three months.”

After this follows the gloss of Vijnaneshwara, which is material for the point now under decision :—

“Again, as to him, who, even residing in his own country, does not pay the debt, though it has been demanded, the King shall cause interest to be paid by him from the date of demand.” In support of this view, Vijnaneshwara cites the rest of the text of Katyayana which we translate as follows :—

“A debtor, who, residing in his own country, does not pay it at any time after demand, shall be made to pay, however unwilling [he may be], interest thereon, though not stipulated, from that time.” The text in question is also cited by Nilakantha in his chapter on “Loans” in the *Vyavahara Mayukha*. And Rao Saheb Mandlik translates the text as follows :—

“[A debtor] who, residing in his own country, does not pay on demand, shall be made to pay, however unwilling [he may be],

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interest thereon, though not stipulated [after the lapse of one year].”

It will be observed that our rendering of the text differs from Rao Saheb Mandlik's in two particulars. In the first place, the words “at any time” which occur in our rendering after the words “does not pay it” are omitted in Rao Saheb Mandlik's translation. The word in the original is *kvachit*, which means “at any time.” The meaning is, if the debtor does not pay *at any time, i. e.*, even after a demand has been made properly or at a proper time. Under what circumstances a demand is properly made Vijnaneshwara points out in another place in the chapter of the Mitakshara on “Loans.” And the force of the word *kvachit* (at any time) is that the debtor is bound to pay after a proper demand—not if the creditor demands unjustly. Borradaile translates the word as meaning “after more demands than one.” His translation apparently follows another reading of the text where, instead of *kvachit*, the word “*asakrit*” (“after more demands than one”) occurs. That reading of the text is given by *Apararka* in his Commentary on Yajnyavalkya [see *Apararka*, Anandashram Series, page 642]. Secondly, the words “from that time” which occur in our rendering of Katyayana's text are not found in Rao Saheb Mandlik's. In the original text, the word used by Katyayana is ततः (*tatas*), *i. e.*, literally meaning, “thence, or, from that time.” There is no Sanskrit word in the original text meaning “after the lapse of one year.” The learned Rao Saheb, instead of translating the word ततः (*tatas*) literally, has used for it the words “after the lapse of one year,” and inserted them in parenthesis at the end of his translation, though the word ततः (*tatas*) is not put by Katyayana himself in parenthesis. The same words as those used by the Rao Saheb are to be found in Borradaile's rendering of the text in his translation of the *Vyavahara Mayukha*. [See Stokes's Hindu Law Books, pp. 111 and 112]. These words appear to us to have been inserted as explanatory rather than as a literal rendering of the word ततः [*tatas*]; but the explanation is opposed to the express interpretation of the text given by Vijnaneshwara in the Mitakshara. As we have pointed out, he first states his view of the law; he says in so many words that a debtor, who, residing

in his own country, does not pay the debt after it has been demanded, shall be compelled by the King to pay interest thereon, *from the date of demand* [*yachita kaladarabhya*]; and then in support of that, Vijnaneshwara cites the text of Katyayana in question. *Nilakantha*, in the edition of his *Vyavahara Mayukha*, published by Rao Saheb Mandlik, merely cites the text; he adds no interpretation of his own. And the rule of this Court, invariably followed, is to accept Vijnaneshwara's interpretation of a text, where *Nilakantha* has adopted the text but added no interpretation of his own, whether agreeing with or differing from Vijnaneshwara's.

The text of Katyayana, with which we are dealing, is the last portion of a larger text, as will be seen from Rao Saheb Mandlik's translation [see *Hindu Law or Vyavahar Mayukh* by V. N. Mandlik, page 103, lines 11 to 20], and deals with three classes of debtors:—(1) a debtor who goes abroad without re-paying his debt; (2) a debtor who goes abroad after demand of payment made by his creditor; and (3) a debtor who resides in his own country and yet does not pay after demand. It is in the case of the first that interest runs after a year; in the case of the second, interest runs after three months; in the case of the third, interest, literally, according to the text, begins to run "from that time." Why should "from that time" be taken to mean "after the lapse of one year" rather than "after three months," if "from that time" is to be referred to the time mentioned in the preceding parts of the text? The last portion of the text of Katyayana has been rendered into English by Colebrooke in his *Digest of Hindu Law*, Vol. I, page 73, as follows:—

"A debtor, who, even residing in his own country, pays not *the debt* after more demands than one, shall be forced, however unwilling, to pay interest on it, though not stipulated, *after the lapse of one year.*"

The italics are by Colebrooke, and it is well-known that Colebrooke's invariable practice was to denote by italics or brackets words which were not in the original text but which were introduced by himself. And he adds the following comment of his own on the words above quoted and italicised:—

"Meaning the very same case, Vishnu says in the text above-cited [L1] 'after the lapse of one year!'"

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Perhaps, though we cannot be sure, both Ráo Sáheb Mandlik and Mr. Borrdaile have adopted *Vishnu's* interpretation of Katyayana's text. But, however that be, we have the interpretation of the *Mitakshára* in express terms; and by that interpretation the present case is governed. And as *Nilakantha* cites the text without dissenting from the *Mitakshára's* interpretation, we are bound to infer that he too has accepted it.

It follows from these considerations that when the Interest Act came into force, it was an incident annexed to every contract of debt by the Hindu Law that interest, though not stipulated for, should run on it, in the event of non-payment, after demand, from the date of such demand. That law then applied to every suit in which the defendant was a Hindu. Has the Indian Contract Act interfered with that law? That Act has not repealed, either wholly or partially, the Interest Act. The proviso to the first section of the latter Act stands still unaffected by the Contract Act. Further, the first section of the Contract Act says: "Nothing herein contained shall affect . . . any incident of any contract not inconsistent with the provisions of this Act." There is no provision in the Contract Act which bears on the question now under consideration unless it be section 73 and Illustration (n) to it. But, according to section 73, a party, who complains of a breach of contract, is entitled to compensation for any loss or damage caused to him, which "naturally arose" in the usual course of things from the breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. According to the Hindu Law, default on the part of a debtor to pay his debt after demand of payment necessarily causes loss to the creditor. In the eye of that law, it is a legal wrong which the creditor has suffered by being kept out of his money. Regarding it as a damage naturally arising in the usual course of things from the default, the Hindu Law annexes to each contract of debt, in which there is no agreement to pay interest, the term or incident that such loss shall be made up by the debtor if he wrongfully withholds payment after demand. And the loss is measured, according to Hindu Law, by the amount of interest which the creditor could have earned if the money had not been wrongfully withheld.

Illustration (n) to section 73 shows that such loss may be within the terms of the section. The Hindu Law on the subject, so far from being inconsistent with the provisions of the Contract Act, is clearly consistent with it. Neither section 73 nor any other provision provides that such an incident as that annexed by the Hindu Law to the contract shall be invalid. The Contract Act does not define or specify what is a loss or damage naturally arising in the usual course of things or which the parties knew, when they made the contract, to be likely to result from breach of it. That must be gathered from the circumstances of each case. And if it is an incident of a contract, annexed to it by Hindu Law, that certain loss arising from its breach shall be treated as direct and not remote, there is nothing in the Contract Act to prevent effect being given to it. Parties to such a contract must be regarded as having entered into it on the footing of that law.

In our opinion, therefore, neither the Interest Act nor the Contract Act affects the rule of Hindu Law, that in the case of a debt wrongfully withheld after demand of payment has been made, interest becomes payable from the date of demand by way of damages. That law was in force when the Interest Act was passed, and under the proviso to the section of the Act it has continued to be in force. The Indian Contract Act has not interfered with that law. On the other hand, that law is consistent with the provisions of that Act. The District Court was, therefore, right in allowing interest to the appellant from the date of her demand. It is agreed before us by the pleaders of both the parties that there is an error in the decree of the Court below as to the amount on which that interest is payable. The amount should be Rs. 2,046-13-9. The decree of that Court should be varied accordingly. In other respects it is confirmed with costs.

Decree confirmed.

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