

(1869) 08 CAL CK 0018
In the Calcutta High Court

Ram Lal Mookerjee

APPELLANT

Vs

Haran Chandra Dhar

RESPONDENT

Date of Decision : 27-08-1869

Acts Referred:

Citation : (1869) 08 CAL CK 0018

Judgement

Sir Barries Peacock, Kt., C.J.—In this plaint interest is not asked for only the principal is claimed. The promissory note is as follows:-- One month after date, I promise to pay to Baboo Rakhal Chandra Banerjee, or order, the sum of rupees 1,200, one thousand and two hundred only, for value received in cash." It was endorsed by Rakhal Chandra Banerjee "pay to Ramlal Mookerjee or order.

This suit is between two Hindus, and in my opinion it must be determined according to Hindu law. What is said by Sir Francis Macnaghten, in his Considerations of Hindu law, does not get rid of the express directions contained in the High Court's Charter, that in such a case as this we shall administer Hindu law. By English law, a contract under seal imports obligation, and the receipt of the amount acknowledged in the contract is evidence of consideration. So by English law a bill of exchange or a promissory note imports consideration. The Privy Council have, in a recent case, expressed a doubt whether, according to Hindu law, a contract under seal does import consideration. I equally doubt whether, according to Hindu law a promissory note imports consideration; and certainly I think that the maker may show that there was no consideration. Here the note sued upon contains a promise to pay rupees 1,200 for value received in cash. I apprehend the defendant is not, on such a note, bound to pay any part of the rupees 1,200 which he can show he never received. It is found that the defendant received only 700 rupees, and that the contract was that he should, after one month, pay 1,200 rupees for 700 rupees. But the defendant was induced by the payee, the money-lender, to write that he had actually received the whole 1,200 rupees, Upon this ground alone, I think the plaintiff can recover no larger sum, by way of principal, than what the defendant received in cash. Beyond this, I doubt whether, as between Hindus, the plaintiff can be entitled to

recover interest at the rate of 500 rupees for the use of 700 rupees for one month. He cannot, by receiving in advance 500 rupees for the loan of 700 rupees, or by taking a contract that he shall be paid rupees 500 with the 700 rupees, recover a higher rate of interest than the Hindu law sanctions.

2. Hindu law did certainly, as between Hindus, restrict the rate of interest to be charged; and I do not think that Act XXVIII of 1855 was ever intended to repeal the Hindu or Mohammedan law as to interest. That Act is entitled "an Act for the repeal of the usury laws," and it recites that "whereas it is expedient to repeal the laws now in force relating to usury, it is enacted as follows: and in section I, it is said, section XXX of the Act of Parliament passed in the thirteenth year of the reign of his late Majesty King George III, instituted "an Act for establishing certain regulations for the better management of the affairs of the East India Company as well in India as in Europe," shall not apply in any part of the territories in the possession and under the Government of the said Company to any bond contract or assurance whatsoever which shall be made or entered into within the said territories after the passing of this Act; and the several parts of regulations mentioned in the schedule hereto annexed, and all laws in force in any part of the said territories relating to usury are hereby repealed." That Act did no more than repeal the various Regulations and Acts which the English Government of India had passed on the subject of usury.

3. In Colebrooke's Digest, I find the following texts : Book I, Chapter 2, section I, clause 23 : "A lender of money may take in addition to his capital the interest allowed by Vasishtha, an eightieth part of a hundred by the month." Clause 24 Vasishtha: "Here the interest for a money-lender declared by the words of Vasishtha, five mashas or one suverna for 20 palas, or 80 suvernas he may claim, and should receive each month; then the law is not violated." Clause 26, Vrihaspati quoted in the Retnakara : "The eightieth part accrues monthly in the principal, and if the interest be received, the loan is doubtless doubled in the third-of-a-year less than seven years, that is in six years and eight months." Clause 29, Menu; If he have no pledge, a lender of money may take two in the hundred by the month, remembering the duty of good men, for by their taking two in the hundred he becomes not a sinner for gain."

4. He may thus take in proportion to the risk and in the direct order of the classes : two on the hundred from a priest; three from a Sudra; four from a merchant; and five from a mechanic or servile man; but never more as interest by the month.

5. Clause 32, Yajnavalkya, ordains "all borrowers who travel through vast forests, may pay ten; and such as traverse the ocean, twenty in the hundred, to lenders of all classes according to circumstances, or whatever interest has been stipulated by them as the price of the risk of the lender." Clause 33, Menu(sic) "Whatever interest or price of the risk shall be settled between the parties by men well acquainted with sea voyages or journeys by land, with times and with places, such interest shall have legal force."

6. It may be contended that the rule of "factum valet "applies. As to this I express no decided opinion, but it seems to me that as yet there is no "factum" as the plaintiff has not yet got the interest. It did occur to me that perhaps the plaintiff might be entitled to interest on the rupees 700 at the ordinary rate. But there is no appeal as to that, so we need not interfere. The decision of the learned Judge will be affirmed with costs on scale 2. The rupees 1,200, which the defendant brought into Court, being still in Court, the defendant is at liberty to withdraw rupees 500 out of that sum: and further out of the remaining rupees 700 he is to be paid his costs when taxed. The plaintiff may take out the residue.

Macpherson, J.

I also think that the decree of the learned Judge ought to be affirmed. It appears to me that he gave very sufficient reasons for the conclusions at which he arrived, and that under the circumstances his decree was perfectly right.