

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the appeal of Rajah
Mahomed Ameer Hussun Khan v. Thakoor
Monoo Singh and others, from the Court of
the Financial Commissioner of Oudh;
delivered, 16th January 1875.*

Present :

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is a suit brought by Rajah Mahomed Ameer Hussun Khan who was the son of Rajah Nawab Ally Khan, the Talookdar of Mahmoodabad in Seetapore, to recover possession of certain estates which he alleged had been mortgaged to him by Monoo Singh and other persons who are made Defendants in this suit, and are now the Respondents. The mortgage was executed in November 1850, and the mortgagor stipulated in the mortgage deed that the mortgagee was to be let into possession to be at full liberty to enjoy the lands, to be at liberty to fell the trees or assign such produce to any person to whom he might think fit to give it, and he also promised to pay moonafah or interest at the rate of $3\frac{1}{2}$ per cent. per mensem.

The mortgage then proceeded, "At the end of
" the harvest of the year we will in one lump
" sum make good the original amount together
" with interest, &c. to the mortgagee from our
" own pocket, and without availing ourselves
" of the assistance of any other party, and thus
" effect the mortgage at the time of redemp-

"tion." They probably mean "and thus *redeem* the mortgage."

The first decree was given by the settlement officer, Mr. Gordon Young, in which he decreed to the Rajah Ameer Hussun Khan the principal sum of Rs. 7,659. 5. 9. and half as much, namely, Rs. 3,829. 10. as interest, making a total of Rs. 11,489. Then he went on, "This sum
" must be paid within one year or possession
" will be given to the Rajah, and till paid into
" Court it will bear interest at six per cent."

An application was made for a review of that judgment, and in the grounds for the review the Plaintiff claimed principal and interest, at the rate stipulated, as well as the profits which had occurred during his dispossession. It appears that he had been dispossessed in 1264, when the Government made the summary settlement with Monoo Singh and the other Defendants. He claimed therefore instead of the principal and half the amount of principal as interest, to have interest awarded to him at the rate of $3\frac{1}{2}$ per cent. per mensem according to the terms of the deed, and to have the profits of the lands which had accrued during his dispossession. Upon that the same settlement officer, Mr. Gordon Young, altered his original decree, and decreed as follows:—"The Court decrees possession of the
" estate of Burehutta to Rajah Ameer Hussun
" Khan, possession to be had from the 15th of
" the ensuing Jeth, unless the sum of Rs. 7,659.
" 5. 9. principal + 14,360. 10. interest, total
" 22,019. 15. 9., be paid by Defendant through
" the Court, such money to be raised otherwise
" than by sale or mortgage of the hypothecated
" property."

From that decision an appeal was preferred to the Commissioner. He reversed the judgment altogether, and holding that the mortgage had been executed merely by the son, and that it was

not binding on the Defendants, he dismissed the Plaintiff's suit, with costs. From that there was an appeal preferred to the Financial Commissioner, and he upheld the first (not the second) decision of Mr. Gordon Young in which he awarded Rs. 7,659. 5. 9. with interest, calculated at half the amount of the principal, Rs. 3,829, making a total of Rs. 11,489. An application was made to the Financial Commissioner for a review of that judgment, and he, after hearing the case, thought that the original amount of interest at $3\frac{1}{2}$ per cent. was usurious, and having heard the case argued, he said, that under the circumstances he held that the decree as it stood, that is the original decree made by the Financial Commissioner himself, was equitable, and he refused to alter his order. The ultimate judgment then stood that the Plaintiff was entitled to recover possession unless the Defendant should within a certain time pay the amount of principal and half the amount of principal by way of interest.

From that judgment there is an appeal to Her Majesty in Council, and the only question which is raised here, is whether the amount of interest which was awarded was a fair and equitable amount, or one which could legally stand? The Plaintiff before us does not claim the profits as well as the interest, but he says that half the amount of principal was an inequitable and insufficient amount to be awarded to him under the mortgage bond. It is admitted that the Punjaub Code has been extended to Oudh, and in section 19 of the Punjaub Code (paragraphs 4 and 5 at page 34 of the Code), it is enacted, that "the Courts are not bound
 " by any restrictions with regard to usury.
 " Debtors and creditors are allowed to arrange as
 " to the terms and conditions of interest in what-
 " ever manner they may deem most conducive to
 " their mutual benefit. The Courts will decree

“ whatever rate may have been agreed upon
“ *boná fide* between the parties. If no special rate
“ shall have been agreed upon, then the Court
“ will fix what may appear an equitable amount
“ with reference to the custom of the locality,
“ the usage of trade, or the merits of the trans-
“ action. It will be remembered that the rates
“ of interest vary for different classes of cases
“ and in different places. If in any case the
“ amount of interest shall be deemed unjustly
“ usurious, the Court will decree only as much
“ as may appear just under the circumstances.”

Now the Financial Commissioner determined that the amount of $3\frac{1}{2}$ per cent. per mensem, or 42 per cent. per annum, was unjustly usurious, and to that extent their Lordships agree with him. The question then comes to this, whether the amount which the Financial Commissioner has fixed, namely, half the amount of principal by way of interest, is such as appears to their Lordships to be equitable under the circumstances? It appears to their Lordships that interest equal to half the amount of principal would not be much more than about 4 per cent. per annum, and that in their Lordships' opinion would be too low a rate of interest to be allowed upon a mortgage in which $3\frac{1}{2}$ per cent. per mensem had been agreed upon. Their Lordships think that $3\frac{1}{2}$ per cent. per mensem is unjustly usurious. On the other hand they are of opinion that the amount of one half the principal is not sufficient amount. They think that a fair amount of interest would be at the rate of 12 per cent. per annum for the time during which the Plaintiff was out of possession of the estate, and that he ought not to have any interest at all during the period in which he was in possession. Assessing the amount for the whole period during which the Plaintiff was out of possession, from 1264, Fusli, down

to the present time, would be giving him about 17 years interest. Now, according to the Punjab Code it is declared that the period during which interest is demanded must not exceed 12 years. Their Lordships, therefore, are of opinion that, looking to the Punjab Code, a fair amount of interest to be allowed to the Plaintiff would be 12 years interest at the rate of 12 per cent. per annum. That amount of interest calculated in round numbers would be about Rs. 11,000, and their Lordships are of opinion that the Plaintiff ought to recover the principal sum namely, Rs. 7,659. 5. 9, together with Rs. 11,000 as interest, making a total of Rs. 18,659. 5. 9.

Their Lordships, upon the whole, will humbly recommend Her Majesty that the decree of the Financial Commissioner be varied by awarding to the Plaintiff as interest Rs. 11,000 instead of one half of the principal, making the total sum for principal and interest Rs. 18,659. 5. 9; and by directing that the Defendant have one year from the date of Her Majesty's Order in Council for the purpose of paying that amount. If the above amount be not paid within that time the Plaintiff to be put into possession of the estate. Their Lordships are of opinion that the Appellants are entitled to their costs of this Appeal.

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