

1934

Present : Dalton J.

OBEYESEKERE v. FONSEKA

125—C. R. Colombo, 83,492

Compound interest—Action on promissory note for money due as arrears of interest—Interest not recoverable—Civil Procedure Code, s. 192.

In an action to recover money on a promissory note, which represented arrears of interest due on a bond, interest on the money due on the note is not recoverable as it would amount to compound interest.

Interest may however, be allowed on the principal sum adjudged to be due on the note, in terms of section 192 of the Civil Procedure Code.

A PPEAL from a judgment of the Commissioner of Requests of Colombo.

Weerasooria (with him *R. C. Fonseka*), for defendant, appellant.

Rajapakse (with him *Jayasuriya*), for plaintiff, respondent.

Cur. adv. vult.

March 22, 1934. DALTON J.—

In this case the plaintiff used to recover a sum of Rs. 139 capital and Rs. 77 interest alleged to be due on a promissory note made by the defendant in favour of the plaintiff. The defendant pleaded that the note had been discharged by payment but on that issue his evidence has been rejected by the learned Commissioner who has accepted the plaintiff's evidence that the note had not been discharged at all. On that point I am not prepared to disagree with the learned Commissioner's conclusion. He has accepted the evidence led for the plaintiff on that point and rejected the defendant's evidence.

A further matter pleaded by the defendant was that the plaintiff cannot as a matter of law, claim interest on the note sued upon as the principal sum of Rs. 139 itself represented arrears of interest and the recovery of interest thereon would amount to compound interest. It is quite clear from the evidence that the note was given by the defendant to cover the balance of interest due on a mortgage bond. The plaintiff had apparently lent the defendant money upon a bond in 1921, and in March, 1928, when this note was signed, the capital due on the bond was paid but a sum of Rs. 130 remained due as interest on the bond. In March, 1928, therefore, it is clear from the evidence that the last payment on account of capital due on the bond had been made, and that this note for Rs. 139 was given to cover the interest due upon the bond. On receipt of that note the plaintiff cancelled the bond. It is quite clear from his evidence that the note was taken for the balance interest due. No issue was raised upon this legal plea raised by the defendant in his answer, but I must infer from the learned Judge's judgment that the question was raised by the Counsel who appeared for the defendant. On this question the learned Judge says: "I do not feel inclined to accede to the claim in the answer that interest should not be charged on Rs. 139 as this would result in compound interest on the amount borrowed on the mortgage bond". It was never denied that capital sum on the note did not represent interest and that the interest claimed on the note was not also interest upon interest, but the learned Commissioner went on the footing that "the defendant had agreed to pay interest according to the promissory note A and he was bound by his contract". Therefore he rejected the defence that interest was not legally payable by the defendant on the sum of Rs. 139.

It seems to me that the sum of Rs. 77 claimed is interest upon interest, which I take is compound interest. It is claimed on behalf of the plaintiff that the nature of the sum underwent some change when the note was signed and that the capital amount of the note was no longer thereafter interest. It seems to me that this argument, if given effect to, would at any rate in several cases go to wipe out the idea of interest upon interest being compound interest together. Mr. Rajapakse has not suggested that the sum of Rs. 77 claimed is not interest upon the sum of Rs. 139 which is certainly admitted to be due as interest upon the bond.

With regard to the learned Commissioner's reason for holding that the defendant was liable to pay the sum of interest for which he has signed the note, it is urged on behalf of the defendant that the common law does not allow compound interest even though expressly stipulated for. There is

authority for that proposition in Ceylon. The case of *Mudiyanse v. Vanderpoorten*¹ and the cases there referred to did so decide as was argued in support of the defendant's plea on this point. Therefore I must hold that the learned Commissioner was wrong in his decision that the defendant must abide by his stipulation. The law decided in these cases is to the effect that compound interest is not allowable although expressly stipulated. There would appear to be in section 192 of the Civil Procedure Code some deviation from the Roman-Dutch law in the matter I have referred to, for this section allow the Court to order interest in the decree in the cases laid down in section 192 of the Code, *i. e.*, when the action is for a sum of money due to the plaintiff. I take it that the words "for a sum of money due to the plaintiff" may refer to money due on a promissory note even in such a case as in this action.

The decree must therefore be varied. The plaintiff is entitled to judgment for the sum of Rs. 139 and the interest thereon under the provisions of section 192 of the Civil Procedure Code as laid down in the decree, and to the costs of the action. The parties have been each in part successful in the appeal and I would therefore make no order as to costs of appeal.

Varied.

¹ 23 N. L. R. 342.