1941 *Present :* **Moseley S.P.J. and Keuneman J.**

DE SOYSA *et al.* *v.* THE ATTORNEY-GENERAL.

101—D. C. (Inty.) Colombo, 490.

Loan Board Ordinance (Cap. 280), s. 20 (2)—Liability to pay interest—Money credited to revenue—Common law.

There is no liability either under the Loan Board Ordinance or under the Common Law to pay interest on a sum of money paid to the Public Revenue under section 20 (2) of the Ordinance from the date of such payment to a person establishing a claim under the proviso to that section.

The words "claim, as well the principal money as the interest due thereon" refer to the money originally on deposit and the interest which it has earned under the administration of the Board.

***Saffra Umma v. Attorney-General (2 Cur. Law Rep. 115)*, referred to.**

APPEAL from an order of the District Judge of Colombo. The facts appear from the judgment.

H. H. Basnayake, C.C., for the appellant.—The case of *Saffra Umma v. Attorney-General*[1] is not an authority for the proposition that interest is payable by the Crown on a deposit after it has been paid over to the Deputy Financial Secretary under section 20 (2) of the Loan Board Ordinance. The question of interest did not arise for decision in that case and cannot be regarded as a binding authority (*Halsbury's Laws of England, vol. 19, paragraph 556, and Osborne v. Rowlett* (*13 C. H. Div. 774*).

The Ordinance does not prescribe the interest to be paid by the Crown and it is not liable therefore to pay interest. Interest is payable only where there is an express agreement to pay interest or where an agreement to pay interest can be implied. (*23 Halsbury's Laws of England* (*Hailsham ed.*), *paragraph 254, and Vander Leuwen, vol. II., p. 61* (*Kotez*)).

The words "such claim, as well the principal money as the interest due thereon" refers to the amount paid under section 18 (2) to the Deputy Financial Secretary.

H. V. Perera, K.C. (with him *N. M. de Silva*), for respondent.—The case *Saffra Umma v. Attorney-General* (*supra*) is completely in point. There the Supreme Court under similar circumstances allowed interest. The matter must have been considered in that case even though there is no note of it in the argument.

The proper section of the Loan Board Ordinance which applies to this case is not section 20 but section 22.

The money in this case being the balance of some *fidei commissum* money was money in Court over which only the Court had power. It was under the orders of Court that money went to the Loan Board. Therefore the Loan Board is accountable to the District Court for all moneys placed in deposit by the orders of Court.

The rules under the Loan Board Ordinance provide for the payment of dividends and the respondents are entitled to all the dividends which have accrued.

Cur. adv. vult.

February 5, 1941. MOSELEY S.P.J.—

This appeal arises out of an application regarding certain moneys originally deposited in the District Court of Colombo being the proceeds of the sale of certain lands subject to a *fidei commissum*. The bulk of these moneys was devoted to the purchase of other properties and on July 31, 1916, there remained a balance of Rs. 1,485.40. This sum appears to have been dealt with by the Government Agent according to the provisions of section 19 of the Loan Board Ordinance (Cap. 280), that is to say, the same "advantages and interest" accrued to it as if the money had been under the administration of the Loan Board. That state of things continued until November 24, 1926, by which date the money, assisted by the dividends allotted by the Loan Board, had increased to the sum of Rs. 3,301.65. The Government Agent then appears to have closed the account by transferring the money to the Loan Board. The Loan Board account, by an entry five days later, viz.,

[1] *2 Cur. Law Rep. 115.*

November 29, 1926, appears to have paid the money to revenue. The Board apparently acted in accordance with the provisions of section 20 (2) of the Loan Board Ordinance which is as follows:—

"If any money now or which may hereafter come under the administration of the Loan Board shall have been in deposit for any period less than one-third of a century to the credit of any person or estate, and shall not have been claimed by any person having just and lawful right thereto for ten years and upwards, or having been claimed such claim shall have been abandoned, withdrawn or not prosecuted within one year from the date of claim, or if such claim has been set aside, then and in every such case (after the expiration of ten years and upwards aforesaid) every account with such person or estate shall be closed; and all such money shall, owing to the lapse of time, be paid over by the Commissioners of the Loan Board to the Deputy Financial Secretary to be carried to the account of the public revenue, but to be appropriated for such purposes cognate to or connected with the administration of justice as the Governor shall from time to time determine:

Provided, however, that if any person shall within one-third of a century from the date of such deposit establish a claim to any portion of the said last-mentioned moneys to the satisfaction of a competent Court of Justice, such claim, as well the principal money as the interest due thereon, shall be paid by the Government out of the general revenue, which is hereby declared liable to meet all such claims."

Until February 23, 1940, when the petitioners moved the Court, no claim had been made in respect of the moneys for nearly twenty-four years. On that date the petitioners applied for an order that the sum of Rs. 3,301.65 should be paid out of revenue to the credit of the action, with further interest upon the original sum of Rs. 1,485.48 until date of payment. The Court issued notice on the Attorney-General and the Commissioners of the Loan Board calling upon them to show cause why the application should not be allowed. The case for the petitioners was that they had established their claim to the money in accordance with the terms of the proviso to section 20 (2) and that "the claim, as well the principal money as the interest due thereon" should be paid by the Government out of the general revenue.

The learned District Judge held that the amount of interest which the petitioners was entitled to receive in respect of the original sum of Rs. 1,485.40 was limited by section 21 of the Loan Board Ordinance to an amount equal to that of the principal sum. He therefore held that the sum of Rs. 2,970.80 should be paid out of general revenue to the credit of the action, and that the petitioners should receive interest on the sum of Rs. 2,970.80 from November 24, 1926, up to the date of payment. For the latter part of this order in regard to interest up to date of payment he found authority in the case of *Soffra Umma v. The Attorney-General*[1].

The Attorney-General admits that the sum of Rs. 3,301.65 is due to the petitioners but appeals against the order for payment of further

[1] *2 Cur. Law. Rep. 115.*

interest up to date of payment, on the ground that the Ordinance does not provide for payment by the Crown of interest on money paid into revenue by the Commissioners under the provisions of section 20 (2) of the Ordinance.

It seems to me that the decision of this appeal turns upon a proper interpretation of the words "the claim, as well the principal money as the interest due thereon" contained in the proviso to section 20 (2).

In the first place the Loan Board Ordinance does not expressely provide for the payment of interest on money which has been deposited with the Board or has come under its administration. The references to interest in the proviso to section 20 (2) and in section 19 imply that such moneys shall bear interest. Moreover, section 9 invests the Commissioners with power to make rules, *inter alia* " (c) for determining the rates of interest on loans and deposits; (*d*) for determining the distribution of interest realized upon the loans . . . .". In exercise of this power rules were framed which provided for the rates of interest to be paid on loans in various circumstances. The rules, however, do not provide for the payment of interest on deposits. In lieu thereof, no doubt rule 24 provides for the allotment "in respect of all sums in deposit on which interest is due a dividend on the interest received by the Board during the previous half-year". The rule proceeds to lay down that "no interest or dividend shall be declared on sums under One hundred Rupees . . . .".

Counsel for the appellant argued that, since the Board has not prescribed a rate of interest to be paid on deposits, the petitioners are, strictly speaking, entitled only to the amount of the original deposit, viz., Rs. 1,485.40. He referred us to the definition of interest in *Halsbury's Laws of England* (*Hailsham ed.*), *vol. 23, paragraph 253*, which is as follows :—

> "Interest, when considered in relation to money, denotes the return or consideration, or compensation for the use or retention by one party of a sum of money or other property belonging to another, and may arise from a loan, or investment of money, or as a result of money or property belonging to one party being retained or unrepaid by another."

It seems to me, however, that the distribution provided for by rule 24 of the Loan Board Rules may well be said to come within this definition. Moreover, the concluding words of the rule embracing the expression "interest or dividend" indicate that the Commissioners regarded the words "interest" and "dividend" as, in this connection, synonymous. Further, in view of the manner in which the amount of the dividend is arrived at, it would be a simple matter for the Board to express the amount of the dividend in terms of a rate of interest. It appears to me, therefore, that, when the Board declares the half-yearly dividend, it does in fact determine the rate of interest on deposits.

Now section 20 (2), as has been seen, provides that if any money has been under the administration of the Loan Board for less than one-third of a century and has not been claimed for ten years or more the account dealing with such money shall be closed and that "all such money" shall be paid by the Commissioners into public revenue. The proviso to

the sub-section refers to a claim to the "last-mentioned moneys" and provides for the payment of the claim "as well the principal money as the interest due thereon". The words "last-mentioned moneys" clearly refer to "all such money" mentioned in the body of the sub-section, that is to say, the amount which has been paid by the Commissioners into revenue, which amount comprises the principal money originally on deposit and the interest which has accrued to it by way of dividends while the money has been under the administration of the Board. When, therefore, in the proviso the Legislature adds to the words "claim" the words "as well the principal money as the interest due thereon" in my view the last-mentioned words refer back to the principal money originally on deposit and the interest which it has earned while under the administration of the Board.

Learned Counsel for the petitioners, however, contends that section 20 of the Ordinance is inapplicable to this case. He relies on section 22 which is as follows:—

> "Nothing herein contained shall be deemed to affect the liability of the Loan Board to account to the different Courts for the moneys placed in deposit by the orders of such Courts, or to conform to and comply with such orders as it has heretofore done."

It may well be, as argued Counsel for the appellant that this section applies to moneys in deposit in the Loan Board at the commencement of the Ordinance, but in any case it seems to me that the section deals with the liability of the Loan Board to account to a Court which has ordered money to be placed in deposit. In this case it is not the Court which is asking the Loan Board to account.

Counsel for the petitioners then relies on the case of *Saffra Umma v. The Attorney-General* (*supra*) in which this Court ordered the payment of interest up to the date of payment. The facts of that case, according to Wood-Renton J. brought the case under the provisions of section 20 (2) (then section 18 (2)) of the Ordinance. In that case, however, the applicant in respect of the money in deposit had on three occasions established her claim to the money, but not until the last occasion did she take any steps to obtain payment. The Judge at the District Court had held that she had abandoned her claim, or not prosecuted it within one year of making it. The judgment of this Court was to the effect that, when such a claim had been established, an application to withdraw the money might be made at any time. The only point which appears to have been argued on appeal, and the only point dealt with either by the District Judge or by Wood-Renton J. was whether the applicant was entitled to the money at all. There is not the slightest suggestion that the question of interest was touched upon.

Counsel for the respondents referred us to paragraph 556 in *19 Halsbury's Laws of England* (*Hailsham's ed.*) which is as follows:—

> "It may be laid down as a general rule that that part alone of a decision of a Court of law is binding upon Courts of co-ordinate jurisdiction and inferior Courts which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined".

The learned commentator refers to *Osborne v. Rowlett*[1] in which Jessel M.R. said that "the only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case is decided". In these circumstances I do not, with respect, consider that *Saffra Umma v. The Attorney-General* (*supra*) can be viewed as an authority on the liability of the Government in regard to the payment of interest.

Since I hold the view that there is no provision in the Ordinance which requires the Government to pay interest on such moneys after they have passed into revenue, the only point for consideration is whether there is any such liability at common law. In *23 Halsbury's Laws of England* (*Hailsham ed.*). *paragraph 254*, the circumstances in which interest is payable at common law are set out. The only conditions which might conceivably apply to the present case, are (1) where there is express agreement to pay interest, and (2) where an agreement to pay interest can be implied from the course of dealing between the parties. Neither of these conditions does in fact apply to the present case.

I would therefore allow the appeal. There is only one further point for consideration. The amount which was actually transferred by the Loan Board to revenue is Rs. 3,301.65. That sum is made up by the original amount in deposit, viz., Rs. 1,485.40 and dividends amounting to Rs. 1,816.25. The learned District Judge however held that, by section 21 of the Ordinance, the amount of interest payable must not exceed the principal, and declared the petitioners entitled to a sum of Rs. 2,970.80 with interest thereon to date of payment. Counsel for the appellant did not seek to take advantage of section 21 in view of the fact that while the money was with the Loan Board a sum exceeding the principal had actually earned.

The order of the District Judge is set aside. The petitioners are entitled to a declaration that a sum of Rs. 3,301.65 be transferred from general revenue to the credit of the action. The appeal is allowed with costs. The District Judge's direction that the petitioners shall find an investment for the money within six months, that is to say, six months from the date of this judgment, failing which the District Court will take steps to have it done, is affirmed.

KEUNEMAN J.—I agree.

Appeal allowed.