Present: Fisher C.J. and Akbar J. 1930.

MUTTIAH *v.* PODISINGHO APPUHAMY.

306—D. C. Negombo, 2,975.

Money Lending Ordinance—Mortgage bond payable by instalments—Renewal of bond—Sums set off as principal and interest—Compound interest—Discretion of Court—Ordinance No. 2 of 1918, s. 2 (1) (a).

Where the parties to a mortgage bond, in cancelling it, entered into a new bond under which the debtor received payments in money in addition to sums set off on account of principal and interest due on the old bond,—

Held (in an action on the bond), that it was within the discretion of the Court whether it should grant relief under section 2 (1) (a) of the Money Lending Ordinance.

Held, further [*per* AKBAR J.], that the discretion was not taken away even where the transaction on the face of it appeared to violate the rule prohibiting compound interest.

APPEAL from a judgment of the District Judge of Negombo.

[1] *S. C. Mins. of January 22. 1930.*

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The plaintiff sued the defendant on a mortgage bond, in which the consideration is stated to be Rs. 15,000, for the recovery of a sum of Rs. 16,312.50, which included interest on the sum borrowed at the rate of 15 per cent. The defendant moved for an accounting under the Money Lending Ordinance, No. 2 of 1918, s. 2 (1) (*a*), and a commissioner was appointed by Court. The learned District Judge gave judgment in favour of the plaintiff for the full amount of his claim.

H. V. Perera (with *Weerasooria*), for defendant, appellant.

Croos Dabrera (with *H. K. P. de Silva*), for plaintiff, respondent.

February 13, 1930. FISHER C.J.—

This is an appeal from a judgment in favour of the plaintiff in an action brought by him to recover the sum of Rs. 15,000 and interest due under a mortgage bond. The defendant invoke the jurisdiction conferred by section 2 of the Money Lending Ordinance, No. 2 of 1918,[1] to reopen money lending transactons where, "there is evidence which satisfies the Court that the return to be received by the creditor over and above what was actually lent . . . . . is excessive, and that the transaction was harsh and unconscionable." The only issue admitted to be tried in the District Court was "what sum is fairly due to the plaintiff on account of the transactions that have led up to the bond sued upon?" and after a very careful examination and consideration of all the facts the learned District Judge held that the amount due by the defendant to the plaintiff was the amount sued for. All the facts are fully set out in my brother Akbar's judgment, which I have had the advantage of reading, and I agree that the conclusion to which the learned District Judge came was right.

It was contended before us that the sum claimed in the action was partly composed of compound interest and that therefore the amount for which the defendant was liable must be reduced to that extent at all events, and *Mudiyanse v. Vander Poorten*[2] was cited in support of that contention. There is certainly no provision in the mortgage bond on which the claim is based which can be construed as an agreement to pay compound interest, and it cannot therefore be impeached on that ground. But for the purposes of considering the question of whether section 2 of the Money Lending Ordinance should be applied a Court is entitled to look at the origin and composition of all sums comprising the capital made payable by the document sued upon, and when that is done in this case the result is that the sum claimed by the plaintiff is somewhat less than the

[1] *Leg. En. II p. 582.*

[2] *23 N. L. R. 342.*

total amount advanced by him with interest at 15 per cent. I do not think that is an excessive return within the meaning of section 2 of the Money Lending Ordinance under the circumstances.

The appeal must be dismissed with costs.

AKBAR J.—

The plaintiff is a Chetty money lender who sued the defendant on a mortgage bond (in which the consideration is stated to be Rs. 15,000) for a sum of Rs. 16,312.50 with interest on the sum borrowed (Rs. 15,000) at 15 per cent. per annum from January 4, 1929, till date of decree, and further interest till payment in full. The defendant prayed for an accounting under the Money Lending Ordinance, No. 2 of 1918, s. 2 (1) (*a*) and (*b*). A commissioner was appointed by the Court whose report has been put in evidence. The parties went to trial on one issue, namely, what sum is fairly due to the plaintiff on account of the transactions that have led up to the bond sued upon? The District Judge has given judgment for the plaintiff for the full sum claimed, and the appeal is pressed on the one ground stated by the commissioner in his report, namely, that only a sum of Rs. 11,275.91 was due to the plaintiff. The defendant's Counsel argued this appeal on the ground that the plaintiff had arrived at the sum claimed by him by charging interest on interest, which is prohibited by the Roman-Dutch law. The bond sued upon was entered into between the plaintiff and the defendant on October 5, 1926, in the circumstances mentioned by the commissioner in his report. It appears that the defendant had entered into "instalment bonds" on previous occasions, and the bond sued upon in this case, which is for Rs. 15,000, was entered into in October, 1926, owing to the cancellation of an instalment bond No. 281 which had been entered into on April 13, 1926, for the sum of Rs. 10,980. This bond No. 281 in turn was entered into when the previous instalment bond for Rs. 6,000 drawn up on July 28, 1923, was cancelled on April 13, 1926, instead of that bond being allowed to run its full course of six years, commencing from July 28, 1923. The defendant's Counsel in his appeal based his argument entirely on the commissioner's report, because no evidence was led at the trial on behalf of the defendant, the only evidence recorded being that of the plaintiff himself. According to the commissioner's report he was of opinion that the bond No. 281 of April 13, 1926, was wrongly given for the sum of Rs. 10,980, when it ought to have really been given for Rs. 9,227.05. In the attestation clause of bond No. 281 it is stated that the consideration is made up as follows:—

Rs. 4,418—deducted in settlement of the balance due on mortgage bond No. 1,611 executed on July 28, 1923.

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Rs. 451.40—deducted as the first instalment of part principal and two months' interest recovered in advance on bond No. 281.

Rs. 2,755—deducted in settlement of another bond No. 1,527 of February 12, 1925.

Rs. 2,000—in payment of a promissory note dated February 10, 1926.

Rs. 1,355.60—paid in cash on the execution of the bond No. 281.

All these various sums amounted to Rs. 10,980. The commissioner points out in his report that the sum of Rs. 4,418 stated to have been deducted in settlement of the balance due on bond No. 1,611 was an overcharge, and that the sum really due was the balance principal on this bond No. 1,611, i.e., Rs. 3,333.36. Similarly the sum of Rs. 2,755 stated to be due on bond No. 1,527 was an overcharge, and that the real sum due on this bond 1,527 as balance principal was Rs. 338.31.

The Chetty explained in his evidence that the two bonds Nos. 1,611 and 1,527 were instalment bonds and that the overcharges were made when the two bonds Nos. 1,611 and 1,527 were cancelled with the consent of the defendant for loss of profits the Chetty had incurred in suddenly cancelling these two bonds whilst they were in the course of running and before they had expired. As explained by the District Judge, these instalment bonds were given at a low rate of interest as the Chetty hoped to recoup himself from the instalments paid by the borrower every two months by which the principal was reduced. Every two months the borrower had to pay a certain sum of money in reduction of the principal and at the same time he had to pay interest on the full sum borrowed at the rate of interest at 8 per cent. So that it will be seen that by the Chetty agreeing to cancel this bond almost in the middle of the period provided in the bond he was forfeiting the profits which would have accrued to him if the bond had run its full course. There can be no doubt at all that the so-called overcharge was the consideration for the Chetty agreeing to cancel the old bond and merging it into a new bond. Otherwise I cannot understand why the Chetty did not insist on the bonds running their full course and the new loan being secured by another bond. So that when it is provided in bond No. 281 that Rs. 4,418 was to be reckoned as the amount due on bond No. 1,611, this was a new contract and the overcharge was added on to the consideration stated in the new bond No. 281 executed on the cancellation of bond No. 1,611. As the District Judge says, this amount was a *quid pro quo* for the cancellation of bond No. 1,611. There is no doubt at all that the defendant agreed to this course because bond No. 281 was signed by him, and in the attestation clause it is stated that this amount Rs. 4,418 was the sum agreed upon as the balance

due on No. 1,611. Further on this calculation the sum of Rs. 1,355.60 was paid in cash to the defendant when bond No. 281 was signed. The only question that arises in this appeal is whether when bond No. 281 stated that the balance due on bond No. 1,611 was Rs. 4,418 and not Rs. 3,333.36, the difference between these two amounts was really interest added on to the principal or whether it is a definite consideration paid by the defendant to induce the Chetty to enter into a new bond. That it is evidence of a new contract is clear from the fact that this difference between the two sums really represents interest as the rate of 12 per cent., which rate is not mentioned in the bond No. 1,611. Ordinarily, of course, the rule of Roman-Dutch law strictly prohibits interest on interest. So that if a creditor and a debtor were to agree that the interest was to be added on to the principal periodically and interest was to be calculated on these two sums as principal, this would be illegal. Similarly, if there is a new contract on the termination of an old contract, a Court can give relief to the debtor under the Money Lending Ordinance if the terms of such new contract appear to be inequitable and unconscionable. But the evidence in this case clearly shows that this principle cannot be applied to a case of this kind where the Chetty and the defendant cancelled a running bond, under which the Chetty hoped to get his full profits during the later part of the period fixed in the bond for the payment of instalments, right in the middle of this period. Similarly when the bond sued upon in this case was entered into on October 5, 1926, cancelling the bond No. 281 (which had only begun to run from April 12, 1926, *i.e.*, a period of only six months, when the full period provided in the bond is six years), it is quite evident to my mind that the bond sued upon was based on a new contract. I do not, therefore, see on what ground the defendant can complain that the transaction was harsh and unconscionable. Even under section 2 (1) (*b*) of Ordinance No. 2 of 1918 it is within the discretion of the Court whether it will reopen a transaction even when on the face of it the transaction would seem to violate the rule prohibiting compound interest. The District Judge has refused to exercise this discretion in this case, and I cannot say that he has wrongly exercised his discretion in this matter. In considering whether the transactions relating to the cancellation of the bond were equitable or not one should keep in mind section 3 of the Ordinance which is as follows: " in the exercise of its powers the Court shall have regard to the lapse of time, the conduct of the party praying for relief and any other equitable considerations that the justice of the case may require to be taken into account. " The justice of this case seems to me to require that full effect must be given to the new bond entered into, because the defendant clearly got an advantage on the execution of the new bond in that actual cash payment was

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made to him at the time of the execution, over and above the sums set off as consideration for the cancellation of the old bond. In the result I think the judgment of the District Judge was right, and I would dismiss the appeal with costs.

Appeal dismissed.