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Present: Pereira J. and Ennis J.

NATIONAL BANK OF INDIA *v.* STEVENSON.

109—D. C. Colombo, 34,614.

Compound interest—Whether a bank could charge—English law applicable.

Defendant had a running account with the plaintiffs, a banking corporation, in which there were quarterly periods or rests, at the end of each of which defendant was debited with interest calculated on the average daily balance of the quarter, and a balance struck, which was carried on to the next quarter. The payment of the balance was secured by two mortgage bonds. It appeared that it was customary with banks to charge compound interest calculated as stated above, and that defendant had, by his conduct, acquiesced in the charge of such interest made by the plaintiffs and in the system of quarterly rests adopted by the bank.

Held, that the rights and liabilities of the parties in connection with the account current were, in terms of Ordinance No. 22 of 1866, which introduced into this Island the English law of banks and banking, governed by that law, and not the Roman Dutch; and that, therefore, the charge of compound interest was not, as such, unmaintainable.

While under the Roman-Dutch law compound interest was not allowed, even though it had been expressly stipulated for, under

the English law it was allowed where, *inter alia*, there was an agreement, express or implied, to pay it, or where its allowance was in accordance with a custom of a particular trade or business.

Held, further, that by reason of the custom with the banks, and of the acquiescence of the defendant mentioned above, he became liable to pay the compound interest charged.

Held, further, that the mortgage bonds were no more than collateral security for the balance on the account current, and that it was no objection to charging the property mortgaged with such balance that it had been partly composed of interest turned into principal by rests and interest on that interest according to the course of dealing between the bank and its customers.

APPEAL from a judgment of the Additional District Judge (L. Maartensz, Esq.).

Elliott, for the defendant, appellant.—Under the bond the plaintiffs can charge only simple interest at 8 per cent. They have been charging compound interest, which the bond did not authorize them to do. The terms of the agreement are contained in the mortgage bond. This has nothing to do with the law of banks and banking. This is a pure contract of loan on a mortgage bond, and the Roman-Dutch law governs such contracts. [Pereira J.—The mortgage bond was only granted as a security. The transaction between the parties was an ordinary banking transaction.] The terms of the agreement are stated in the bond. If the bank wished to charge compound interest, it should have inserted a clause to that effect in the bond. The plaintiffs cannot vary the terms of the bond. Custom cannot be pleaded to vary the terms of the bond as to the rate of interest.

Even if the English law of banking is held to apply to cases of this nature, Ordinance No. 5 of 1852, section 3, would not permit the plaintiffs to recover compound interest.

In any event the plaintiffs have not proved any uniform custom. There is no question of estoppel between the plaintiffs and defendant, as no one was prejudiced. Counsel cited *21 Cal. 366*.

H. J. C. Pereira (with him *Allan Drieberg*), for the plaintiffs, respondents.—The case is governed by the English law as to banking. The defendant himself has acquiesced in the custom and allowed the plaintiffs to debit interest at the end of every quarter. Counsel cited *Rufford v. Bishop* [1] and *Creskill v. Bowen*.[2]

Elliott, in reply.

Cur. adv. vult.

July 1, 1913. PEREIRA J.—

In this case the plaintiffs sue the defendant for the recovery of the sum of Rs. 125,678.81, being the balance shown to be due from the defendant to the plaintiffs on a certain account current between

[1] *Russ. 346.*

[2] *32 Beav. 86.*

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the parties. The payment of this sum is secured by two mortgage bonds granted by the defendant to the plaintiffs, namely, bond No. 8,223 dated June 19, 1901, and bond No. 8,767 dated March 31, 1904; and the plaintiffs, in addition to praying for a money decree, pray also for a mortgage decree declaring the mortgaged property bound and executable for the recovery of the amount claimed. The current account began in 1901, and, apparently, the balance now sued for was struck on March 31, 1912. In this account there were quarterly periods or rests, at the end of each of which the defendant would appear to have been debited with interest at 8 per cent. per annum calculated on the average daily balance of the quarter, and a balance struck, which was carried over to the next quarter. This process of calculation was, of course, largely due to overdrafts made by the defendant on the plaintiff-bank; and it apparently involved the charging of interest upon any interest that might happen to be included in each quarterly balance carried over. This the defendant contends is tantamount to compound-interest; and the dispute between the parties has been narrowed down to the issue whether the plaintiff-bank is entitled to recover the compound interest included in the account filed of record. In view of the line of argument adopted by the defendant's counsel in appeal, the first question to be decided is whether the rights and liabilities of the parties in connection with the account current referred to above are governed by the English law or the Roman-Dutch. Under the latter law compound interest, that is, interest upon interest, is, of course, not allowed (see *Vand. D. C. Rep. 57*), even though it is expressly stipulated for (*Ram. Rep. for 1872-1876, p. 189;* see also *Cens. For. 1, 4, 4, 27*); but under the former it is allowed where there is an engagement, express or implied, to pay it, or where the debtor has employed the money in trade and has presumably earned it, or where its allowance is in accordance with a custom of a particular trade or business. Now, by Ordinance No. 22 of 1866, in all questions or issues which arise or which may have to be decided in this Colony with respect to the law of banks and banking, the law to be administered is the same as would be administered in England in the like case at the corresponding period (see section 1). The expression "banking" has been construed to "embrace every transaction coming within the legitimate business of a banker" (*Tennant v. Union Bank of Canada* [1]); and there is little doubt that the keeping of a current account between a bank and its customer is a transaction coming within the legitimate business of a banker, and that the law governing the rights and liabilities arising in connection therewith is, therefore, in terms of the provision quoted of Ordinance No. 22 of 1866, the English law. It has been argued that, even assuming that to be so, the matter of interest to be charged on accounts is removed from the operation of the English

[1] *(1894) A. C. 31.*

law by reason of the provision as to interest in section 3 of Ordinance No. 5 of 1852, and that that provision has in effect restored the Roman-Dutch law against compound interest to transactions otherwise governed by the English law. I confess I cannot for one moment accede to that proposition. Section 2 of Ordinance No. 5 of 1852 introduced into this Island the law relating to bills of exchange, promissory notes, and cheques, and in respect of all matters connected with any such instruments; and a proviso was added to this enactment by section 3, to the effect that no person should be prevented from recovering on any contract any amount of interest reserved thereby, or from recovering interest at 9 per cent. per annum on a contract by which no different rate of interest had been specially agreed upon. I fail to see how this proviso in any way affects the provision of section 1 of Ordinance No. 22 of 1866, which introduces into the Colony the English law as to banks and banking. The next question appears to me to be, whether the bank had the right to charge compound interest and to make quarterly rests and debit the defendant's account with interest, and carry the balance struck on that footing on to the following quarter. An effort has been made to show that it is customary with the banks to charge compound interest in the manner in which the plaintiffs have done in this instance, and also to make quarterly rests. The evidence as to the latter is not very clear; indeed, it has been shown that the periods differ in different banks, but the mere fact of making rests has been established. However that may be, the custom of charging interest on interest has, I think, been fully established. Mr. Brand distinctly says: " The custom of charging interest on interest is common to all banks wherever I have been." The evidence of Mr. Lawrence, Mr. Yeats, and Mr. McGregor is very much to the same effect. But, quite apart from the matter of custom, which, if proved, would of course bind the defendant, it seems to me that there is abundant evidence in the case to show that the defendant acquiesced in the charge of compound interest made by the plaintiffs and in the system of quarterly rests adopted by them, and that, hence, both these matters were to all intents and purposes matters involved in the agreement between the parties. The defendant's current account with the bank began in 1901. During the long years that had elapsed, the bank pursued its ordinary practice of charging (and paying, I presume) compound interest and making quarterly rests, and the defendant, who well knew this practice, and who in fact carried on business with the bank on the footing of this practice, never once raised any objection to it. He says in his evidence: " I saw that the interest was being charged on interest from pass book P. I knew that nine years ago "; and I am entirely with the District Judge in thinking that the facts show that the defendant was fully aware of the matter of the quarterly rests as well.

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There remains to be considered the effect of deeds 8,228 and 8,767. These deeds appear to me to do no more than provide security for balances that became due on the account current, and in my opinion they had no effect or influence over that account, except perhaps to the extent of limiting the interest chargeable on balances thereon to 8 per cent. per annum. On the question here involved, the cases cited by the respondent's counsel appear to me to be quite in point, namely, *Rufford v. Bishop*[1] and *Creskill v. Bowen.*[2]. The bond dealt with in the former was in very much the same terms as those in the bonds in question in this case; and it was there held that " where a mortgage of land was made by way of collateral security for such balance as might eventually be due from a customer to his banker, it was no objection to charging the land with such balance that it had been partly composed of interest turned into principal by rests and interest on that interest, according to the course of dealing between the banker and his customers." The rate of interest there charged was that stipulated for in the bond. It is needless to go into the question whether any other rate might have been charged, because the defendant in the present case is, I take it, content with the charge of 8 per cent. per annum made by the plaintiffs. As regards the second case cited, I need do no more than refer to the passage quoted by the District Judge from the judgment in that case of the Master of the Rolls.

For the reasons given above I would affirm the order appealed from, with costs.

ENNIS J.—

This was an action by the National Bank of India claiming a balance of account against a customer. The learned District Judge allowed the claim, and the defendant appeals.

It appears that the defendant's firm had two current accounts at the bank, and on June 19, 1901, the accounts being overdrawn and further overdrafts being required, a security bond was entered into whereby the defendant's firm agreed, *inter alia*, to pay interest on all moneys " due or to become due upon or in respect of the said accounts current and each of them," and on the balances on closing the accounts " at the rate of 8 per cent. per annum to be computed from the time or respective times of the same becoming due or owing." Later, on March 31, 1904, further overdrafts being required, a further bond was entered into and other property hypothecated by way of security.

One issue only was framed in the District Court, viz., " Is the plaintiff bank entitled to recover in this action compound interest included in the account particulars filed of record?"

[1] *Russ. 346; see Eng. Rep., vol. 38, p. 1058.* [2] *32 Beav. 86.*

It appears that the plaintiff-bank were in the habit of calculating the interest due by quarterly rests and debiting the amount every quarter in the current account, and the District Judge has found that the defendant " was all along aware of the fact that he was being charged compound interest, and that he agreed to interest being so charged by raising no objection to the interest debited to his account." On the appeal it was urged that the learned District Judge was wrong in so holding. I see no reason, however, to doubt the correctness of the learned Judge's finding. The defendant in cross-examination admitted that the pass book showed the entries for interest, and said that he sent the pass book to the bank once a month " pretty regularly," and he added, " I saw that the interest was being charged on the interest from pass book P 6. I knew that nine years ago." I am clearly of opinion that, as in the cases cited by the District Judge, the defendant must be taken to have acquiesced in the course of dealing adopted by the plaintiff-bank with its customers, and in the method of accounting for interest with quarterly rests.

It was next argued that the law applicable in Ceylon is Roman-Dutch law, which forbids compound interest. It was urged that Ordinance No. 22 of 1866, introducing English law into Ceylon in questions relating to banks and banking, did not apply in the case, as the matter was one of loan, or an action on the bond not coming under the law of banks and banking. I am unable, however, to see how questions relating to deposit of money in a bank by customers, the keeping of current accounts by the bank, and the remuneration of the bank by interest, can be severed from the law of banking; moreover, the cases on these questions are all dealt with under the head " Banking " in the text books (*e.g.*, *Halsbury's Laws of England*). Further, if Roman-Dutch law were to apply, it seems to me that another principle of that law might also apply, on the contention that the matter is to be considered apart from banking, and that every payment in current account might be deemed a repayment on account of an interest-bearing debt, and be allocated first to the payment of interest then due. To apply this to an ordinary current account into which money is constantly being paid would leave very little room for any question of compound interest.

In my opinion, the issues in the case had to be decided by English law, and the cases cited by the learned District Judge are ample authority for the statement that the method of accounting adopted by the plaintiff-bank is not illegal by the law of England.

I would dismiss the appeal with costs.

Appeal dismissed.