

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Goswami Sri Ghansham Lalji v. Ram Narain, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 1st November 1906.

Present at the Hearing:

LORD MACNAGHTEN.

SIR ARTHUR WILSON.

SIR ALFRED WILLS.

[*Delivered by Sir Arthur Wilson.*]

The suit out of which this Appeal arises was brought upon six hundis drawn by the Defendant (Appellant) upon himself in favour of the Plaintiff (Respondent). The hundis were silent as to interest; but there was a collateral agreement, embodied in written documents, that the hundis should bear interest at a rate equivalent to 30 per cent. per annum. And it has been held that the dealing with interest by a collateral agreement, and not on the face of the hundis, was in accordance with the custom prevailing in the district, and amongst the class, affected by this suit.

The contention of the Appellant was that, notwithstanding the agreement of the parties, the Respondent's right to interest was restricted to 6 per cent. by Section 80 of the Negotiable Instruments Act, XXVI. of 1881. Both the Courts in India rejected this contention, and their Lordships think rightly.

The section says:—

“When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases

“ provided for by the Code of Civil Procedure, Section 532, be
 “ calculated at the rate of six per centum per annum, from
 “ the date at which the same ought to have been paid by the
 “ party charged, until tender or realization of the amount due
 “ thereon, or until such date after the institution of a suit to
 “ recover such amount as the Court directs.

“ *Explanation* :—When the party charged is the indorser
 “ of an instrument dishonoured by non-payment, he is liable
 “ to pay interest only from the time that he receives notice of
 “ the dishonour.”

In 1855, by Act XXVIII. of that year, the usury laws previously in force were repealed, and the general rule was laid down that “ In any
 “ suit in which interest is recoverable, the
 “ amount shall be adjudged or decreed by the
 “ Court at the rate (if any) agreed upon by the
 “ parties.” Section 80 of the Negotiable Instruments Act does not purport to deprive those dealing with such instruments of the freedom of contract possessed by other contracting parties. It purports to confer a right to interest, not to take away such a right otherwise existing. When a Plaintiff has to rely upon the section as the ground of his claim to interest, no doubt the terms of the section must be followed. But to read the section as depriving him of a contractual right of interest would be to read into it something which it does not say, and which cannot reasonably be implied from its language.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Respondent not having appeared, there will be no order as to costs.
