

(1869) 02 CAL CK 0013

Calcutta High Court

Case No: None

Thomas Alexander Wise

APPELLANT

Vs

Jagabandhu Bose

RESPONDENT

Date of Decision: Feb. 23, 1869

Judgement

Lord Selwyn, J.

Their Lordships are unable to entertain any doubt upon this case, either with respect to the facts, or with respect to the law which is applicable to those facts. The facts are simple and plain. It is perfectly clear that the original lease was connected with the bond, and that that original lease was a beneficial lease. But the matter does not stop there, because, when you come to the under-lease, although it was subsequent in point of date, it has reference back to the date of the original lease; and if you look at the assignment from the servant at the time when the servant ceased to be in the service of Mr. Patrick Wise, that assignment deals with the whole as one entire transaction. Their Lordships, therefore, can come to no other conclusion than that the transaction was one, and that it was a transaction which was tainted with usury.

2. Then, with respect to the argument that Captain Wise had no knowledge of what took place, to all intents and purposes Mr. Patrick Wise was his agent. It is not alleged, and still less is it proved, that the native who lent his money was at all aware that there was any distinction between one part of the transaction and the other. In point of fact, Mr. Patrick Wise was acting for an undisclosed principal, the loan being a lending upon one transaction, which transaction was clearly usurious; therefore Captain Wise is in this position: either he must go against his agent and repudiate the transaction altogether; or if he does not repudiate the transaction, he must take it with all its consequences. That being so, brings us to the terms of the Regulation. There are two sections, the 8th and the 9th (1). The 8th section deals with the case in which the usurious interest is disclosed on the face of the instrument, and is different to the 9th section. There might be a very good reason for that. There might well be, where there was no fraud, and where the whole thing was disclosed, a right

to recover the principal, whereas, in a case where there was fraud, that right might be taken away. The terms of the 9th section appear to their Lordships to be perfectly clear, because the Court is not "to decree any interest whatsoever in favour of the plaintiff, in any case where the cause of action shall have arisen on, or subsequent to, the 28th March 1780, where a greater interest than is authorized by this Regulation shall have been received, or stipulated to be received, if it be proved that any attempt has been made to elude the rules prescribed in it by any deduction from the loan, or by any device or means whatever;" and then there comes this: "nor to give any other judgment, but for the dismissal of the suit," and we cannot conceive that that means anything but the dismissal of the suit, so far as it has relation to that usurious contract, though, of course, it would be different if you had one count on one transaction, and another count upon another and a totally different transaction. In point of fact this matter, if not actually concluded by judgment, is virtually concluded by the expression of opinion in the former case, for at page 219, 4 Moore, 219, we find this sentence:--"If, therefore, in this case we were to pronounce a judgment whereby the principal should be recovered without interest, such a judgment would be in complete defiance of that Regulation by which we are bound." We have nothing to do but to repeat these words in which we fully concur; therefore, on both grounds, 1st, because the transaction was usurious, and 2nd, because of the terms of the Regulation, their Lordships will humbly advise Her Majesty that these appeals ought to be dismissed with costs, and the decree appealed from affirmed.

<p>1) Reg. XV of 1793, Sec. 8--The Courts are not to decree any interest whatever in any case, where the bond or instrument given for the security and evidence of the debt shall have been granted on, or subsequent to, the 28th day of March 1780, and shall specify a higher rate of interest than is authorized by this Regulation to have been given and received <u>subsequent to that date</u>.</p>	<p>Sec. 9--Nor to decree any interest whatsoever in favour of the plaintiff, in any case, when the cause of action shall have arisen on or subsequent to the 28th day of March 1780, where a greater interest than authorized by this Regulation shall have been received, or stipulated to be received, if it be proved that any attempt has been made to elude the rules prescribed in it, by any deduction from the loan, or by any device or means whatever nor to give any other judgment, but for the dismissal of the suit with costs to be <u>paid by the plaintiff</u>.</p>
<p>Secs. 6, 7, 8, 9 of this Regulation are repealed by Act XXVIII of 1855, and the remainder of Regulation, by Act VIII of 1868.</p>	