

1922.

*Present : Bertram C.J. and Schneider J.*

MUDIYANSE *v.* VANDERPOORTEN.

379—*D. C. Kurunegala, 8,119.*

*Compound interest—Money paid when not due—When it may be recovered.*

The Roman-Dutch law does not allow compound interest even though expressly stipulated for.

Money paid, but not due, can only be recovered back if it is paid under a mistake, or if an unequivocal protest or objection was lodged at the time of payment.

**T**HE facts appear from the judgment.

*M. W. H. de Silva*, for the appellant.

*Hayley*, for the respondent.

March 27, 1922. BERTRAM C.J.—

This is an action for the recovery of sums paid in respect of certain mortgage debts which are alleged by the plaintiff not to be due. The District Court has rejected the claim, and the plaintiff has appealed. There are two items in question. The first is an item of Rs. 700. It is alleged by the defendant that this sum was paid with respect to the current account of the plaintiff, and that it had been arranged between the plaintiff and the defendant that certain deductions should be made from the sum so paid in respect of certain items due on the current account, and that the balance only should be paid in liquidation of the mortgage debt. The plaintiff who sues for the recovery of this sum says that no such items were due, and that no such arrangement was made. The

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learned Judge finds as a fact that the sum paid was properly accounted for. I take this finding to be a finding of fact in the defendant's favour. Moreover, I cannot believe that the claim for the refund of this money is honest at all. If the plaintiff really paid so large a sum in respect of the mortgage debt, he would never have settled the account as he afterwards settled it. I see no reason to disturb the learned Judge's conclusion on this point.

With regard to the second amount claimed, the facts are these : At a certain stage in the accounts the defendant charged compound interest. He says that this was done with the consent of the plaintiff. I have some difficulty in understanding this, as so late as about a month before the final settlement an account was rendered in which no compound interest was claimed. At any rate, in the final account compound interest was charged. Now, there can be no question that this was an overcharge. The Roman-Dutch law does not allow compound interest to be claimed even though expressly stipulated for (see the cases *D. C. Kalutara, No. 22,393*,<sup>1</sup> *Ramasamy Pulle v. Tamby Candoo*,<sup>2</sup> and *The National Bank of India v. Stevenson*).<sup>3</sup> But the question is whether this sum, having been paid, can be recovered back. It is clear law that money paid, but not due, can only be recovered back if it is paid under a mistake (see the discussion of Arnold Vinnius on this subject : "Select Questions of Law," chapter 47, which will be found translated in *Pothier, vol. II., page 437*). It may also be recovered if, at the time when the payment was made, an unequivocal protest or objection has been lodged. See the law as stated and supported by the South African authorities in *Maasdorp, vol. III., page 396*. But in this case there is no mistake. The plaintiff expressly says in his evidence : "When I made the final payment I knew that interest had been overcharged, but in order to get final discharge I consented to pay." Further, there was no protest. So far from being a protest there was a friendly settlement, and the defendant, as an act of grace, deducted the sum of Rs. 100 ; and though the settlement was made in March no action was brought to recover the sum alleged to be overpaid until the following October. It seems to me that the appeal fails with regard to both the items discussed, and in my opinion, should be dismissed, with costs.

SCHNEIDER J.—I agree.

*Appeal dismissed.*

<sup>1</sup> *Vand. 57.*

<sup>3</sup> (1913) 16 N. L. R. 496.

(1875-76) *Ram. 189.*