# Nadershaw Sheriarji Rabadi vs Shirinbai Bapuji Musa on 25 February, 1923

## Equivalent citations: (1923)25BOMLR839, 87IND. CAS.129

JUDGMENT

Fawcett, J.

1. After expressing conclusions on questions of fact as summarised above the judgment proceeded : I first take up the question about Awabai's costs in Suit No. 13 of 1917. As already mentioned, the decree in this suit was passed on July 17, 1919, and Awabai's costs were taxed at Rs. 1494-12-0 in November 1919, Ex. I. There is no specific provision in the mortgage deed for the payment of any costs of litigation, but Mr. Inverarity for the plaintiffs relies upon the ordinary law of mortgage by which a mortgagee can tack on to the mortgage debt coats of litigation properly incurred by him in supporting the mortgagor's title, etc, Mr. Desai, on behalf of the defendant, has raised various objections, which I will consider in due order.

2. His first contention is a general one, that these costs were not in any case payable by the mortgagor on October 14, 1919, because they had not been actually ascertained, the allocatur of the Taxing Master not having been given until some time in November 1919; but I think this is completely answered by the fact that the mortgagor's liability for these coats was totally denied, so that there was no occasion for an immediate ascertainment of the exact amount which should be tendered on that account. The position could easily have been met; for instance, the mortgagor might have made an offer to pay these costs under protest, just as the interest for three months in lieu of notice was paid, or an undertaking might have been given by the mortgagor's solicitors to pay the costs as finally taxed just as they gave an undertaking to pay the reasonable costs-of the reconveyance. Accordingly I do not think there is any force in that particular point.

3. Next it is said that these costs cannot be tacked on under Section 60 of the Transfer of Property Act, read with the definition of "mortgage-money" in Section 58, viz., "the principal money and, interest of which payment is secured for the time being." I notice that in the case of Pestonjee v. Hormasji (1903) 5 Bom. L.R. 387 389 the plaintiff's counsel in that case (who happened to be Mr. Inverarity) apparently did put forward a contention of that kind which was accepted by the Court, but Batty J.'s expression of opinion is purely an obiter dictum, for the suit was decided on other grounds.

4. In connection with this contention, it is pointed out that, while Section 72, para (c), provides for the case or a mortgagee in possession being entitled to add all costs incurred "for supporting the mortgagor's title to the property," Section 65 of the Transfer of Property Act, on the other hand, clearly contemplates the mortgagor, and not the mortgagee, defending the former's title; and it is

therefore argued that under the Transfer of Property Act the mortgagee can only add such costs to the mortgage debt, if he is actually in possession. I think it is clearly very improbable that the Legislature intended to alter the English common law rule under which the mortgagee is entitled to tack on the costs of litigation relating to the security as part of the terms on which redemption is allowed. The law on this point will be found stated in Halsbury's Laws of England, Vol. XXI, Article 270 at p. 145 and Article 121 at p. 231, and Mr. Inverarity has rightly drawn the Court's attention to the rule that such coats of litigation can only be allowed to the mortgagee as a condition of the redemption. In Article 421 it is stated that" a mortgagee is allowed proper costs, charges and expenses incurred by him in relation to the mortgage debt or mortgage security including the costs of litigation properly undertaken by him; but all these items are allowed only as a condition of redeeming. There is no implicit contract by the mortgagor to pay them, and they are not, in the absence of express agreement, recoverable against him personally". This lest provision applies in this case, for the mortgage deed contains nothing regarding the mortgagor's liability to pay costs of litigation, although it does contain provisions for repayment of costs of repairs, etc., as a charge on the mortgage property. The law in India has not, so far as I am aware, been authoritatively held to be different from the law in England on this point, and reference may also be made to Sections 83 and 84 of the Transfer of Property Act which speak of "the amount remaining due on the mortgage" and not merely of "the mortgage-money" as is done in Section 60. The expression "the amount remaining due on the mortgage" is obviously a very wide one, and, in my opinion, covers any just allowances or costs, which can be tacked on under the ordinary law of mortgage. I think this indicates the real intention of the Legislature, and that the words "mortgage-money" in Section 60 must he taken as including all money which, on taking an account between the parties, may be properly allowed to the mortgagee, as has in fact been held in Varadarajulu Chatty v. Dhanalakshmi Ammal (1914) 16 M.L.T. 365. I also agree with the opinion expressed in Upendra Chandra Mitter v. Tara Prosanna Mukerjee (1903) I.L.R. 30 Cal. 794 800 which has been followed in Rakhohari Chattaraj v. Bipra Das Dey (1904) I.L.R. 31 Cal. 975 that Section 72 cannot be taken to imply that a mortgagee not in possession has no similar right to charge the mortgaged property for payments properly made by him in relation to the security, and that the mortgagee is entitled to have amounts so paid added to the amount of the original lien. This is, I think, supported by the ruling in Damodar Gangadhar v. Vamanrav Lakshman (1885) I.L.R. 9 Bom. 435, where a bench of three Judges of this Court have laid down that under the ordinary law of mortgage the mortgagor is bound, so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title, and that it is therefore superfluous to insert in the mortgage deed provisions regarding such indemnification. The Judges there followed the corresponding rule of English law, which is now set out in paragraph 1901 of the 6th Edition of Fisher's Law of Mortgage at p. 952. I hold, therefore, that the expression "mortgage-money," as used in Section 60, includes costs properly incurred by the mortgagee, such as coats of litigation which are allowed under the law of mortgage in England.

5. [His Lordship after dealing with the history of Suit No. 13 of 1917, continued:] Mr. Desai contends that the case falls under the rule of English law that the mortgagee will not be allowed the costs of litigation arising out of the wrongful act of a stranger, though it be directed against the mortgaged estate : see Fisher's Law of Mortgage, 6th Edn., p. 950; or, as it has been put in Halsbury's Laws of England, Vol XXI, Article 433, at p. 238, the costs incurred in defending the mortgagee's title to the

mortgage against a third person cannot be allowed. But Shafcrabhai cannot, in my opinion, be treated as a mere stranger or a third person of that kind. The defendant and her husband had undoubtedly done acts which gave Shakrabhai grounds for contending that he was an equitable mortgagee and the case put in paragraph 1 of the plaint, if true, would justify his claim, even though the first writing was unregistered, having regard to the ruling in Kedarnath Dutt v. Shamloll Khettry (1873) 11 Beng. L.R. 405, which has been approved by the Privy Council in the recent case of Subramonian v. Lutchman (1925) 25 Bom. L.R. 582. The same principle is also approved by the Privy Council in Pranjivandas Jagjivandas Mehta v. Chan Ma Phee (1916) I.L.R. 43 Cal. 895 P.C. No doubt the terms of the document of May 10, 1911, may support the contrary plea set up by the defendants in that suit, but the issue between the parties, if it had been tried, would not have depended on that alone. Thus in Subramonian's case, although the document contained words leading to the conclusion that the deposit was contemporaneous with the writing, yet their Lordships discussed the oral evidence in regard to the facts. And even supposing that the documents relied upon by Shakrabhai were inadmissible in evidence, the fact remains that it was through defendant's acts, which I have already held were not disclosed to Awabai, that the litigation arose. The suit cannot be said to have been a wholly unjustifiable one and a suit by a merely litigious person, coming within the class of oases referred to in the English law relied upon by Mr. Desai, And this supposition is supported by the correspondence Exts. N to S, where mention is made of a probable settlement of the suit by the plaintiff and the original defendants, and concurrent adjournments are asked for. The fact that the plaintiff finally did not put in an appearance, when the suit was called on, points very strongly to the fact of some such settlement having been arrived at; and therefore there is no ground for saying that the suit was entirely unsuccessful. In this view of the circumstances, it seems to me that all the equities are really in favour of the mortgagee I also agree with Mr. Inverarity's contention that, even adopting the law laid down in the case of Parker v. Watkins (1859) John. 133 there is shown to have been such concurrence and assistance by the defendant mortgagor in the defence put up by Awabai against Shakrabhai's claims, as would bring the present case out of the general rule there laid down. In fact I think that this case really falls under the general principle laid down in Ashburner on Mortgages, Indian Edition, p. 383, that"An incumbrancer is always entitled to add to his security the coats of proceedings to which he is properly made party in respect of his incumbrance." The decree, as I have already mentioned, awarded Awabai's costs against Shakrabhai, bat evidence has been given by the Managing Clerk Ardeshir that Shakrabhai subsequently became insolvent and that Awabai has not been able to recover her costs from him. No evidence to the contrary has been led and I accept that statement....

6. I now take up the question of compound interest. There is express provision for this in the mortgage-deed, under which it was agreed that if any of the monthly instalments of interest was not paid on its due date, such unpaid instalment of interest should be capitalised and added to the amount of the principal loan and would henceforth carry interest at the rate of twelve annas per month leviable as simple interest, and it is further provided that all such additions by way of capitalised interest should be chargeable upon the mortgaged property. Such a provision is not penal so as to bring the case under Section 74 of the Indian Contract Act according to decisions of the Calcutta High Court, which there is no reason to question. On the other hand no action was apparently taken by Awabai or her representatives to demand payment of any compound interest at any rate until 1919; but on this latter point, I do not believe Ardeshir's evidence that he then

objected that compound interest should be paid. Musa has denied that any such statement was made and, on a point of conflict of testimony of this kind, I must be guided mainly by the correspondence Exh. H. which contains no specific mention of any compound interest being claimed. The question is whether in these circumstances it can be claimed now. The general rule on this point is laid down by Sir Lawrence Jenkins in Hari Lahu v. Ramji (1904) 6 Bom. L.R. 307 as follows (p. 311) :- "The Courts do not lean towards compound interest, they do not award it in the absence of stipulation, but where there is a clear agreement for its payment, it is in the absence of disentitling circumstances allowed." Here the main facts are that simple interest was paid up to the end of August 1918 though somewhat irregularly. Thus, according to the statement made from the receipts given on behalf of Awabai (Exh. X), payment of interest for April 1913 was not made until February 23, 1916, payment for May 1916 was not made until February 25, 1917, and payment for August 1918 was not made until August 18, 1919. The receipts given by Awabai, Exh. I, are all in the same form and merely acknowledge the receipt of the actual amounts paid as interest for specific months. These receipts are inconclusive on this point. They are not alone sufficient to show any waiver on the part of Awabai of her right to compound interest. They fall under the rule, of which Keene v. Biscoe (1878) 8 Ch. 201 is an instance, that the mere receipt of interest after the due date is insufficient to show waiver. The general rule in regard to waiver is that there can be no waiver, unless the person against whom the waiver is claimed had full knowledge both of his rights and of the facts which would enable him to take effectual action for their enforcement. Again in Keene v. Biscoe, it is said that "where a right has accrued it can be waived, but to amount to waiver there must be something done which is inconsistent with the continuance of that right." In the present case, putting it as favourable as possible to the mortgagor defendant, all that can be said is that Musa had married Awabai's Eriece so that she might very likely be content with simple interest, and in fact she probably knew nothing whatever about the provision for compound interest contained in the mortgage deed. I also think that, as contended by Mr. Desai, the present claim, which seeks to extort the utmost farthing of compound interest with effect from the year 1912, is an afterthought, of which evidence is afforded by the statement, Exh. 2, as compared with the statement, Exh. J, and the omission of any specific mention of compound interest in the correspondence Exh. H. Even the notice of August 24, 1919, says nothing about compound interest, though of course the expression "all arrears of interest" is wide enough to cover it. And again the letter of October 28,1919, only says that the amount tendered is not the full amount due, though I think this might be due to compound interest not having been paid so as to cover a short period, in regard to which the plaintiff says that an extra sum of Rs. 18 is claimable. But is this enough to show waiver? In my opinion it cannot be said to be sufficient to show that Awabai intended to give up any claim that there might be to compound interest, for neither she nor her advisors did anything which was absolutely inconsistent with such a claim being made. On this general ground, though I have carefully scrutinised the circumstances with a view to give relief to the defendant if it were possible, I cannot find sufficient evidence to justify me in taking such a course. I may here notice briefly the fact that in the mortgage deed, after the provisions about compound interest to which I have already referred, it is further provided that the said mortgagor "will after the same shall be due upon demand pay to the said mortgagee any interest which shall be capitalised hereunder and any interest which shall accrue due thereon." Mr. Desai drew my attention to the words "upon demand" and I was at first inclined to think that this impliedly necessitated an express demand by the mortgagee for compound interest before any liability to pay it could be said to arise under the mortgage-deed. But against such a

construction is the fact that the prior provisions expressly make the capitalized interest and the interest due thereon an addition to the Hen secured by the mortgage property ; and this subsequent clause about payment upon demand seems to me to provide merely a personal covenant by the mortgagor to pay such compound interest. It is difficult otherwise to see what was the necessity for inserting this provision. And then again, the words "on demand" do not necessarily mean that there must be an express demand, such as I have mentioned. Thus in Perumal Ayyan v. Alagirisami Bhagavathar (1869) I.L.R. 20 Mad. 245 these words were construed as merely equivalent to "forthwith" or "immediately." So that I cannot see my way to holding that the Court can relieve the mortgagor against the express provisions in the deed about the payment of compound interest.

7. Next, in regard to the mortgagor's liability to pay interest in lieu of three months' notice. Such liability is expressly recognised by Sections 60 and 84 of the Transfer of Property Act and the deed contains express provision for such payment. The deed qualifies the liability by these words:

> In is hereby agreed and declared that if the time fixed for payment of Rs. 4,000 be allowed to pass audit thereafter the said mortgagor shall be desirous of paying off the said principal sum, then and in such case the said mortgagor shall give the said mortgagee three months' previous notice in writing of her desire, etc.

8. Mr. Desai rightly relied upon the practice in England which is referred to in Ashburner on Mortgages, p. 355, This lays down that a mortgagee is ordinarily entitled to six calendar months' notice of the intention to pay off the mortgage or in default thereof is entitled to six months' interest in advance in lieu of notice; but if the mortgagee has given notice calling in the mortgage debt, the mortgagor, even though he is a few days late in complying with the notice and tendering the money, is not bound to give six months' notice before redeeming. A similar statement of the law will be found in Halsbury's Laws of England, Vol. XXI, p. 148. Mr. Inverarity argues that this rule does not apply here because this is merely a practice of the Court of Chancery in England, whereas here there is express. provision on the point in the mortgage-deed. On the other hand, as stated in Gour's Law of Transfer in British India, 4th Edition, Volume II, p. 948, Article 1419, "the object of the notice being to enable the mortgagee to find a new security for his money, he is entitled only to such notice as will enable him to find a new investment." That object is, I think, plainly recognised in this particular mortgage-deed by the qualification about the mortgagor being desirous to pay off the mortgage-debt, to which I have already referred; otherwise it is difficult to see what is the object in inserting these particular words. The mortgage-deed also contains subsequent provisions under which, when the mortgagee wants to get his money, he can give three months' notice to the mortgagor, and notice accordingly was in fact given on August 24, 1917. Therefore the mortgage-deed recognises two different cases, first, where the mortgagor is the party who primarily wants to pay off the mortgage, and, secondly, where the mortgagee is the party who is desirous of getting his money. The two cases seem to me to be mutually exclusive, and consequently the main question seems to be, whose was the desire which actually led to the tender of payment? In my opinion, in view of the notice of August 1917, it must be taken that the main desire operating was that of the mortgagee to have his money back in pursuance of that notice, and that the subsequent action of the mortgagor in expressing a desire to pay off the mortgage debt was a subsidiary one and does not bring the case under this provision for three months' interest in lieu of notice. No doubt it

is the fact that the tender was made some two years after the expiry of the three months' notice, and of course that is a point which must be taken into consideration ; but I think in this case it is really immaterial. No doubt the ordinary case, like that of Edmondson v. Copland [1911] 2 Ch. 301 is one where there is a delay of only a few days, and I think that ordinarily a delay of two years would not bring the case under the rule I am dealing with. But here the delay of two years is fully explained by the suit No. 13 of 1917, which complicated matters between the mortgagor and mortgagee, and it seems obvious that by mutual consent no action was taken upon the notice of August 191? pending the settlement or decision of this suit. The suit was not decided until 1919, and then it wad that the mortgagor took action to pay up in accordance with the notice of August 1917; so that I do not consider that this particular delay deprives the Court of jurisdiction to allow the mortgagor's ' contention that she is not liable to pay three months' interest in lieu of notice. I think the equities of the case are on her side, and that the Court should accordingly allow that claim.

9. I now come to the question of the validity of the tender of October 14, 1919 (issue No. 4). It is admitted that there was actually a tender of Rs. 4494 and this was properly made to the mortgagee's solicitors in accordance with the notice of August 1917. It is unnecessary therefore to go into the question whether Ardeshir or Musa is correct as to the actual circumstances surrounding this tender. But there is no doubt that, in view of my finding that the mortgagor was liable to pay the costs of Suit No. 13 of 1917, the amount tendered was insufficient; so that, supposing Section 84 of the Transfer of Property Act to apply, the amount remaining due on the mortgage was not actually tendered, so as to make interest cease under that section. Mr. Inverarity, therefore, naturally contended that interest did not in fact cease; but in the course of the arguments I drew his attention to Section 14 of Bombay Regulation V of 1827, which provides that, if a debtor can prove that he has tendered to a creditor the whole or any portion of the amount due, all further interest shall cease on the amount tendered. The question is whether this section affects the tender in this case and if so to what extent. The word "debtor" in Section 14 is certainly wide enough to cover a debtor who has given security by way of mortgage, and this is in fact, I think, shown by Section 15 of the same Regulation, which deals with the case of an usufructuary mortgage or pledge and speaks of a creditor and of the debt. Similarly in Act No. XXVIII of 1855, providing for the Repeal of the Usury Laws, Section 6 speaks of the lender and borrower of money upon any mortgage, so that there is no reason to suppose that Section 14 (if literally construed) would not cover the case of a mortgagor and mortgagee. But the question is how far this is reconcileable with the ordinary principle that a mortgage cannot be redeemed piecemeal. Here it must be remembered that the defendant mortgagor was seeking to pay off the entire mortgage debt, with a view to redeeming the property and obtaining a reconveyance. And it has for instance been held in the case of Lachmi Narain v. Muhammad Yusuf (1894) I.L.R. 17 All. 63 that even in a case where a mortgagee has allowed his mortgagor to pay a portion of the mortgage debt and realise a proportionate part of the mortgaged property, that does not thereby entitle the mortgagor or his representative to redeem the rest of the mortgaged property piecemeal. Again I may refer to the case of Ainsworth v. Wilding [1905] 1 Ch. 435 440 which gives reasons for holding that a mortgagee is not bound to accept payment by driblets. If the question was merely one of an ordinary simple money debt, then this Section 14 does seem to me to provide a clear authority for allowing a debtor to tender not the entire debt that he owes his creditor, but a part of that debt, subject to the qualification, which I shall deal with later, that he tenders it as a part payment and not in full satisfaction of his debt, and that thereupon all

further interest shall cease on the amount that he has actually tendered. It is still good law, for it was declared by Section 5 of the Laws Local Extent Act, XV of 1874, to be in force in the whole of the Bombay Presidency, except the scheduled districts such as Sind, and even in Sind it is in force, as it was subsequently extended thereto by another notification. It is not repealed by the Transfer of Property Act although it may be noted that the following Section 15 is so repealed ; nor is it repealed by the Indian Contract Act. Then under Section 2, Clause (a), of the Transfer of Property Act, and Section 1, last paragraph, of the Indian Contract Act, it is provided that nothing contained in either of those Acts shall be deemed to affect the provisions of any enactment not expressly repealed by either of them, so that there is very clear ground for saying that this Section 14 of Bombay Regulation of 1827 is still in force in the Presidency town of Bombay, as well as the rest of the Bombay Presidency. It follows that the rule adopted in cases like Watson & Co v. Dhonendra Chunder Mookerjee (1877) I.L.R. 3 Cal. 6 16 about the tender of a part of the money debt, is clearly not good law, so far as regards simple money debts in the Bombay Presidency. In Behari Lal v. Ram Ghulam (1902) I.L.R. 24 All. 461 463 the judgment of the Court says:

> It seems to us that where no stipulation or covenant; has been made between the contracting parties as to payment of a sum borrowed, the lender is entitled to decline to receive payment of a sum due to him in instalments, and be can claim that the whole sum due be paid at one and the same time. Such seems to us to be the principle which governs the payment of moneys lent in English law, and we know of no opposite authority in the Indian law.

10. I respectfully submit that, so far as this Presidency is concerned, there is clear authority to the contrary in this Section 14. But coming back to the particular point that arises here, namely, in the case of a mortgagor seeking to redeem the entire mortgage and tendering only a part of the mortgage debt really due, the question is whether this Section 14, so far as it relates to a tender of part of a debt, can be held to apply to a case of that kind. The only reported case that I have been able to discover where Section 14 of this Regulation is referred to is that of Kamaya v. Devapa (1896) I.L.R. 22 Bom. 440 446. That was a case of a suit for redemption, where the mortgagors had admittedly offered to pay an insufficient amount, and Mr. Bhandarkar in his arguments for the plaintiffs, who were the mortgagors, says:

> When we made the tender in 1890, Section 14 of Regulation V of 18i7 was in force, and it laid down that as soon as tender was made, interest should cease. The notice we gave requested the defendant to go to a certain house and there receive Rs. 80. The tender was sufficient. The plaintiffs then believed that they had offered the whole amount that was due.

11. In the judgment of the learned Chief Justice Farran, no reference is made to this particular argument. The passage which relates to this offer merely says:

> It follows that the offer to redeem by paying Rs. 80, which the plaintiff-mortgagor made by his registered letter in April, 1890 (Ex. 35), was an offer of an insufficient amount which the defendant was not bound to accept. The lower Courts have treated

> this offer as a tender, and no objection appears to have been made to its sufficiency as such by the defendant. A mere offer by letter to pay an amount w not, however, usually treated as a tender either in law or in equityFisher on Mortgage page 912. In order to stop interest, a strict tender should be provedCoote on Mortgage, page 959, (5th Ed.).

12. So that the judgment really proceeded on the ground that there had not really been a tender which could operate, and accordingly it was not necessary to consider how far, if at all, Section 14 of this Regulation applied to the case; unless at any rate, when the judgment says that the offer was one of an insufficient amount which the defendant was not bound to accept, it impliedly refused to accept the contention that Section 14 could apply to a case of that kind. Section 14 is expressed in very unambiguous terms and of course ordinarily it must be given its proper effect. There are also difficulties in the way of restricting its effect by the principles of construction which are often applied in such a case. Thus it might be said that Section 84 of the Transfer of Property Act is a special enactment in regard to the cessation of interest on tenders in the case of mortgage transactions, which constitutes an exception to the provisions of the general enactment contained in this Section 14; and that it constitutes an exception just in the same way as, when you get a statute which contains a particular enactment and a general enactment, and the latter taken in its most comprehensive sense would overrule the former, the law of construction is that the particular enactment must be operative, and the general enactment must be taken to affect only the other part of the statute to which it may properly apply. On this point;, reference may be made to Hardcastle's Statutory Law, pp. 229 and 239 of the 3rd Edition. But in the way of such a contention come the provisions of Section 2(a) of the Transfer of Property Act and Section 1 of the Indian Contract Act, to which I have already referred, and which say that nothing contained in either of these Acts shall be deemed to affect the provisions of an enactment not expressly repealed, such as the Section 11 of Bombay Regulation V of 1827; for, if you say that Section 84 of the Transfer of Property Act is to be taken as an exception to the general provisions of Section 14 of the Regulation, you certainly do "affect" the latter enactment; so that I do not adopt that particular contention. But I think that obviously Section 14 should be qualified to some extent. In the first place, it must, I think, be read as if the words "in the absence of a contract to the contrary" preceded the operative words of the section. For it is a general rule that every man may renounce a benefit or waive a privilege which the law has conferred upon him, at any rate so long as it does not prejudice the rights of third persons: see Broom's Legal Maxims, 7th Edition, page 535; and therefore if a contract expressly provides that, in order that interest shall cease, the entire debt due must be tendered, I do not think that any Court would hold that the contract should not be given effect to.

13. But another point that I think is still stronger is this. It is a general rule of construction in England that statutes which limit or extend common law rights must be expressed in clear and unambiguous language, and that general words are not to be so construed as to alter the common law, or the previous policy of the law, if a sense or meaning can be applied to them consistent with the intention of preserving the existing policy untouched; see Halsbury's Laws of England, Volume XXVII, Articles 283 and 284, pages 150 and 152. Now, when a debtor tenders to a creditor really part of his debt, not the entire debt, and asks him to take that in full satisfaction of the debt, it is clear law that the creditor is entitled to refuse to accept the tender, because otherwise he would

virtually preclude himself from saying that he had not been paid the full amount due : see Addison's Law of Conrt acts, 10th Edition, page 184. That is an obviously logical principle, which has been laid down from early days in English law, and it is part of the common law which would clearly be given very great weight by any English Court in dealing with a provision of this kind. I am sure the Court would construe this Section 14, if possible, so as to be consistent with that part of the common law, and the same rule is in fact enacted for India by Section 38 of the Indian Contract Act, which says that an offer of performance must be unconditional. If you go and attach to your offer to pay a debt the condition that the creditor must accept it as full satisfaction, although really it is not the whole amount due, you attach a condition to your offer and the creditor is entitled to reject it. That is in fact the principle on which Wilson J. decided a case of that kind in Kanye Lall Khan v. Khetramoney Dossee (1879) 5 C.L.R. 105; and so far as Section 38 of the Indian Contract Act is inconsistent with Section 14 of the Regulation, it might be said that Section 14 must be construed subject to the exception, which Section 38 provides for. But again the difficulty arises that if you do that, you are allowing Section 38 of the Indian Contract Act to "affect" the provisions of a Regulation which has not been expressly repealed by the Indian Contract Act, contrary to Section 1 of the Act. But against that I think the Court is fully justified in saying that Section 38 of the Indian Contract Act only reproduces what was the old law applicable not only in England but in India prior to the enactment of the Indian Contract Act, and that if this question had come before a Court prior to the enactment of the Indian Contract Act, the Court would inevitably have said that Section 14 of the Regulation cannot be construed in such a wide sense as entirely to abrogate this rule of common law. That at any rate is the view I take on the subject after careful consideration of the point. I think it would obviously lead to very great inconvenience and absurdity, if this general provision in Section 24 were construed otherwise. So that, even leaving out of account Section 38 of the Indian Contract Act and Section 84 of the Transfer of Property Act, I hold that, if a debtor-mortgagor tenders an insufficient sum in payment of the entire mortgage debt due from him and asks (as the mortgagor did in this case) that the mortgagee shall accept that tender as being the full amount due to him under his mortgage, then Section 14 will not operate to allow cessation of interest on the insufficient amount tendered.