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BIJOY CHAND MAHATAB v. AKHIL BHUIYA.

The decrees of the Courts below are set aside and these cases sent back to the Court of first instance in order that that Court may settle fair rents. Costs of these appeals will abide the result.

We assess the hearing fee at Rs. 70 (rupees seventy only) to be distributed equally in all the 70 cases.

S. M. *Appeals allowed ; cases remanded.*

ORIGINAL CIVIL.

Before Page J.

1923

July 27

MULLER MACLEAN & CO.

v.

S. M. ATAULLA & CO.*.

Rate of Exchange—Foreign bill of exchange—Interest.

On a decree being passed in a suit on bills of exchange stated in foreign currency :—

Held, that the decretal amount in rupees was to be calculated at the rate of exchange on the respective dates when the bills matured for payment, and not at the rate of exchange on the date of the decree.

S. S. Celia v. *S. S. Volturno* (1), *Dekhari Tea Company* v. *Assam-Bengal Railway Co.* (2), *Muller Maclean & Co.* v. *Kaderbhoy* (3) followed.

THIS was a suit to recover the rupee equivalent of the sums of 6,718 dollars 37 cents and £353-13-4, with interest thereon at the rate of 8 per cent. per annum from the respective dates of eight bills of exchange, calculated at the rate of exchange prevailing at the date of decree.

Mr. F. S. R. Surita, for the plaintiff.

Mr. R. N. Banerjee, for the defendant.

Cur. adv. vult.

*Original Civil Suit No. 777 of 1923.

(1) [1921] 2 A. C. 544. (2) (1921) I. L. R. 48 Calc. 886.

(3) (1922) 25 Bom. L. R. 177.

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PAGE J. In this case the plaintiff Company, which is incorporated in the United States of America, has obtained a decree for the value of eight bills of exchange, the value of six being stated in the dollar currency of the United States, and the value of two in sterling. The question which now falls for determination is whether the decretal amount in rupees is to be calculated in accordance with the rate of exchange prevailing on the respective dates when the bills matured for payment, or, as the plaintiffs contend, with the rate of exchange prevailing at the date when the decree was passed. In the absence of an agreement between the parties to the contrary, I am of opinion that the decretal amount in the case of each bill is to be calculated in accordance with the rate of exchange prevailing on the date when the cause of action arose. In my judgment the same rule is to be applied whether the cause of action is for a debt or for damages, and whether it sounds in contract or in tort. The rule is one consonant with principle and with authority. [See the case of *Owners of Steamship Celia* v. *Owners of Steamship Volturno* (1), *Barry and others* v. *Van Den Hurk* (2), *Lebeaupin* v. *Richard Crispin & Co.* (3), *Di Fardinando* v. *Simon, Smits & Co., Ltd.* (4), *In re British American Continental Bank, Ltd.* v. *Credit General Liegeois' Claim* (5), *In re British American Continental Bank, Ltd.* v. *Goldzieher and Penso's Claim* (6), and *Dekhari Tea Company, Ltd.* v. *Assam Bengal Railway Co. Ltd.* (7)]. In the case of *Société des Hotels le Touquet Paris-Plage* v. *Cummings* (8), Lord Justice Atkin observed *obiter* "but no case that

(1) [1921] 2 A.C. 544.
(2) [1920] 2 K. B. 709.
(3) [1920] 2 K. B. 714.
(4) [1920] 3 K. B. 409.
(5) [1922] 2 Ch. 589.
(6) [1922] 2 Ch. 575.
(7) (1921) I. L. R. 48 Calc. 886, 890.
(8) [1922] K. B. 451, 465.

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"I know of has yet decided what the position is when "a foreign creditor to whom a debt is due in "his country in the currency of his country, comes "to sue his debtor in the Courts of this country for "the foreign debt. Much may be said for the pro- "position that the debtor's obligation is to pay, say "francs, and so continues until the debt is merged in "the judgment which should give him the English "equivalent at that date of those francs." With the greatest respect to the learned Lord Justice I agree with the subsequent judgment of Mr. Justice P. O. Lawrence in *In Re British American Continental Bank Ltd.*(1), and I confess that I do not share the doubts on the subject which Lord Justice Atkin expressed in the above case. The view taken by Mr. Justice Lawrence, in my opinion, is sound in principle and supported by authority. It has not been, and could not reasonably be, contended that the proper date is the date when the payment is in fact made, while "waiting to convert the currency till the date of judgment only adds the uncertainty of the exchange to the uncertainty of the law's delays," as Lord Justice Sumner observed in the case of SS. *Celia* v. SS. *Volturno* (2). The plaintiffs further contended that, even if the rule be that which I have enunciated, the parties to this suit have expressly provided in terms appearing on the face of the bills that the currency is to be converted at the rate of exchange prevailing on the date when the decree is passed. The words relied on are "draft to be paid "at the current rate for Bank demand draft at date of "payment with interest added at 8 per cent. per "annum from date to approximate date of returns reaching New York." In the case of *Muller Maclean & Co.*

(1) [1922] 2 Ch. 589. (2) [1921] 2 A. C. 544.

v. *Kaderbhoy* (1), the High Court at Bombay held that this provision did not operate to vary the general rule, and that the rate of exchange was to be calculated at the rate prevailing at the date when the bills matured for payment. The judgment of Mr. Justice Marten in that case was affirmed on appeal. I agree both with the decree which was passed by that learned Judge, and with the reasons upon which it was based, and I am content to follow the judgment which Mr. Justice Marten delivered in that case. I desire, however, to add a few observations upon the words "with interest added at 8 per cent. per annum "from date to approximate date of returns reaching "New York." I agree with Mr. Justice Marten that the words "from date" mean from the date that the bill was drawn. The course of business is that the bill with shipping documents attached, is taken to a Bank, which forthwith discounts the bill, charging interest thereon from the date when the bill is discounted until the date when a sum representing the value of the discounted bill is actually received by the discounting Bank in New York or London, as the case may be. If, therefore, the words "from date" were held to mean "from the due date for payment" which, on the assumption that it would take 3 weeks for the bills to reach Calcutta after leaving New York would be a date 84 days after the date upon which the bills were drawn, the plaintiffs would be unable to recover from the defendants the sum representing the interest which the Bank in New York was charging in respect of the bills which it had discounted. In my opinion, the words "from date" mean "from the date when the bill was drawn," and there will, therefore, be judgment for the plaintiffs for Rs. 33,370-2 with costs on scale No. 2.

(1) (1922) 25 Bom. L. R. 177.

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MULLER MACLEAN & Co. v. ATAULLA & Co.

Interest at 8 per cent. from date of judgment until realisation.

Attorneys for the plaintiff company: *Orr, Dignam & Co.*

Attorneys for the defendant company: *H. C. Banerjee.*

N. G.

APPELLATE CIVIL.

Before Chatterjea and Panton JJ.

BAIKUNTHA NATH CHATTORAJ

v.

PROSANNAMOYI DEBI.*

1923

Aug. 2.

Restitution—Who can claim it—Civil Procedure Code (Act V of 1908), s. 144.

Articles in the possession of X and taken into the custody of the commissioner appointed by Court were delivered to X after the reversal of the judgment of the District Judge by the High Court. The High Court judgment being subsequently reversed by His Majesty in Council, Y, who was not in possession of the articles, before the commissioner took charge of them, applied for restitution of the properties to him.

Held that the properties not being taken out of Y's possession under any decree or order of Court, Y was not entitled to claim restitution.

Jai Berhma v. *Kedar Nath Marwari* (1) referred to.

APPEAL from ORDER by Baikuntha Nath Chattoraj, the applicant, for letters of administration.

One Mandakini Debi died leaving cash and ornaments in an iron-safe and certain boxes. On the 1st October, 1918, Baikuntha Nath Chattoraj applied for

*Appeal from Order, No. 167 of 1923, against the order of H. M. Veitch, District Judge of Bankura, dated April 9, 1923.

(1) (1922) I. L. R. 2 Pat. 10, 16.