

beyond doubt that it was the appellants who were themselves taking the bets for their own profit and gain.

That being so, they have been justly convicted, and their appeals must be dismissed.

E. H. M.

Appeals dismissed.

1926
 WALVEKAR
 v.
 EMPEROR.
 CHOTZNER J.

ORIGINAL CIVIL.

Before Buckland J.

HOGARTH SHIPPING Co., LTD.,

v.

mitsui BUSSAN KAISHA, LTD., *In re.**

1926
 March 18.

Interest—Interest Act, (XXXII of 1839) s. 1.—“ Court before which such debt or claim may be recovered,” meaning of—Executing Court, position of.

On an application for stay of execution of an award made under the Indian Arbitration Act of 1899 pending hearing of an appeal, the question of the payment of interest by the judgment-debtors on the amount of the award as and from the date of the stay was raised by the judgment-creditors and it was ordered that the consideration of the question be reserved for further consideration by the Court when the appeal was heard. The appeal was subsequently heard and dismissed.

On an application now made to Court for an order for payment of interest upon the sum awarded.

Held, that in so far as the claim was based upon the Interest Act, 1839, the expression “the Court before which such debts or sums may be recovered” appearing in section 1 of the Interest Act, 1839, refers to the Court which adjudicates as to the actual debt or claim and not to the Court in which the award is filed which is in the position of an executing Court, and accordingly it was not open to the Court to grant interest at that stage to the applicants.

* Ordinary Original Civil Jurisdiction.

1926

HOGARTH
SHIPPING
Co., LTD.,
v.
MITSUI
BUSSAN
KAISHA.
LTD.,
In re.

APPLICATION in Chambers.

This was an application made on behalf of the Hogarth Shipping Co., Ltd., for an order for payment of Rs. 1,680 by way of interest upon the sum awarded in their favour against Mitsui Bussan Kaisha, Ltd. The award was made on the 14th March 1925 under the provisions of the Indian Arbitration Act, 1899, and was filed in Court on the 19th March 1925.

The facts of the case (for the purpose of this report) are fully stated in the judgment.

Mr. W. W. K. Page, for the applicant.

Mr. Steel Perkins (of Messrs. Orr, Dignam & Co.)
contra.

BUCKLAND J. This is an application made on behalf of Hogarth Shipping Co., Ltd., for an order for payment of Rs. 1,680 by way of interest upon the sum awarded.

The award was made on 14th March 1925 and on the 19th March was filed in Court. An application for execution of the award was made, and eventually on the 21st May, Mitsui Bussan Kaisha, Ltd., applied for stay of execution pending hearing of the appeal. On that application an order was made which was by consent except as regards the question of interest. As regards interest it was apparently contended that no interest should be allowed on the amount of award. My learned brother Mr. Justice C. C. Ghose ordered, eliminating such passages as do not refer to this question, that Mitsui Bussan Kaisha should pay to Messrs. Pugh & Co., the attorneys for the present applicant, the sum of Rs. 2,000 to cover the claim for interest made by Hogarth Shipping Company. It was further ordered that Messrs. Pugh & Co. should not, without an order of this Court, pay the sum of Rs. 2,000 to the Hogarth Shipping Company, and

finally it was ordered that the consideration of the question of the liability of Mitsui Bussan Kaisha for interest on the amount of the award be reserved for further consideration by this Court when the appeal is heard. Nothing need be said about subsequent proceedings beyond observing that the appeal has been heard and dismissed.

1926

HOGARTH
SHIPPING
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MITSUI
BUSSAN
KAISHA,
LTD.,
In re.

BUCKLAND J.

It appears that the Hogarth Shipping Company were claiming interest as one of the terms on which stay of execution should be allowed, and did not claim interest on the award, which indeed they could not have done as the award did not provide for it. The only question is whether or not they are entitled to interest as and from the date of the stay. The difficulty arises from the terms of the order, for the passage which I have last quoted cannot be reconciled with payment of interest being imposed as one of the terms upon which stay of execution would be allowed, for had that been so, it must have been so provided in the order. It is inconceivable that the question of interest, merely as a ground for stay, should be postponed by the learned Judge who was dealing with the question of the terms upon which the stay should be allowed. I confess I have considerable sympathy with the applicants and but for the last passage in the order, I should have been prepared to accede to the application but I am unable to see how I can do so consistently with the language employed.

Then the claim is further based upon the Interest Act. That is a different proposition because such a claim, if sound, would entitle the applicant to interest on the award as and from the date of the award, but it does not appear that any such claim ever was made. Nevertheless as the point has been taken now as an alternative I must deal with it. It appears to me that as regards the award this Court is now in

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the position of an executing Court and is not a Court in which such sums or debts may be recovered, to employ the language of the section. Those words in my opinion refer to the Court which adjudicates as to the actual debt or claim. There is no question but that the claim in other respects conforms to the terms of the section, but for these reasons I do not think that it is open to this Court to grant interest at this stage to the applicant under the Interest Act.

The application is therefore dismissed with costs.

Attorneys for the applicants: *Pugh & Co.*

Attorneys for the respondents: *Orr, Dignam & Co.*

A. P. B.

CRIMINAL REVISION.

Before Suhrawardy and Duval JJ.

MADHAB CHANDRA SAHA

v.

EMPEROR.*

1926
 March 22.

Summary Trial—Complaint of offence not triable summarily—Omission to frame a charge in appealable warrant cases—Criminal Procedure Code (Act V of 1898), ss. 262 (1), 263 and 264.

A summary trial in which an appeal lies is governed by s. 264 of the Criminal Procedure Code, and the only record thereunder is a judgment containing the particulars set out in s. 263. No formal charge is required to be drawn.

Natabar Khan v. King-Emperor (1) not followed on the point.

Where, after taking the evidence-in-chief of the prosecution witnesses the trial Magistrate, on objection taken that the offence was not triable

* Criminal Revision No. 169 of 1926, against the order of T. H. Ellis, Additional Sessions Judge of Dacca, dated Jan. 15, 1926.